AIRPORT DEREGULATION

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AVIATION

OF THE

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TESTIMONY

PREPARED STATEMENTS SUBMITTED BY WITNESSES

AIRPORT DEREGULATION

Thursday, April 1, 2004

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m. in room 2167, Rayburn House Office Building, Hon. John L. Mica [chairman of the subcommittee] presiding.

Mr. MICA. Good morning. I'd like to call this hearing of the House Aviation Subcommittee to order. I'd welcome everyone this morning.

The topic of the subcommittee hearing today is airport deregulation. We have one panel, and the order of business will be opening statements from Members and then we will turn to our panel of witnesses.

I'll start with my opening statement, and then yield to other Members who want to be recognized.

Today's hearing, as I said, will focus on airport economic deregulation. Airline deregulation ended the Federal Government's involvement in the day-to-day business of the commercial airliners. Airlines are free to decide what service to provide, where to provide it, and how much to charge. While the Federal Government is now completely out of the business of regulating air fares and services, it continues to exercise considerable control over airport economic activities. Most airports are not subject to true market competition and require Federal oversight to ensure equal access, promote fair competition, and protect interstate commerce.

The Department of Transportation and the Federal Aviation Administration have set strict guidelines on airport access, competition, landing rates, gate charges, and revenue usage. Some members of the airport community have voiced concern over the growing number of Federal mandates associated with their airplane finances. They feel that these mandates reduce flexibility, create unnecessary cost, and also impede important airport development.

Airport development is a key to the economic future growth not only of local communities and States, but also to our country. The Federal Government must strike a balance between airport capacity and its other responsibilities.

This summer hopefully we'll finally see a return of our once robust airline passenger traffic. As the economy continues to recover, we can expect major congestion delays at many of our Nation's busiest airports.

The Department of Transportation and the Federal Aviation Administration announced last week temporary measures to prevent

runway and airway gridlock this summer, and some of these provisions, as you know, and ability to deal with this was included in our Flight 100 legislation, so we are pleased to see them take this action. But despite these efforts, in the end the only way to meet future demand is to build more runways, improve our airports' infrastructure.

The recently passed FAA reauthorization bill, Vision 100, contained environmental streamlining provisions, which also will help some, and those changes address cumbersome Federal environmental review processes; however, we made those changes without weakening underlying environmental laws. These provisions will reduce the time it takes to build much-needed airport capacity and improve infrastructure. However, I believe that we need to take a similar approach to airport economic regulation. I think we can reduce the amount of costly bureaucratic procedures that we have in place and some of the red tap that we have while maintaining Federal interests in the airport system. I think this is an important hearing on the future of these infrastructure hubs and transportation hubs of the future. I think it is a critical issue that this subcommittee addresses to where we go from here.

We have a great panel of witnesses with tremendous expertise, and I look forward to their testimony.

Mr. DeFazio should join us later, but I'm pleased to yield at this time to Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman. I look forward to what part I can be here to listen to these testimonies. It is an important subject, for sure.

Mr. DeFazio would like to ask for concurrence that he can make his opening statement when he arrives.

Mr. MICA. Without objection, when he arrives we will recognize the ranking member.

With those opening comments, I am pleased to recognize our panel of witnesses today. We have with us The Honorable Jeffrey N. Shane who is the Under Secretary for Policy at the U.S. Department of Transportation; Mr. Charles Barclay, president of the American Association of Airport Executives; Mr. Jim May, president and CEO of ATA, Air Transport Association; Mr. Ed Faberman, executive director of the Air Carrier Association of America; Mr. James E. Bennett, president and CEO of the Metropolitan Washington Airports Authority; and also Ms. Bonnie Allin, president and CEO of the Tucson Airport Authority from Tucson, Arizona.

I want to first of all welcome our panel of witnesses. Some of you have been before us before, some of you are new. If you have lengthy statements which you'd like to have made part of the record, please request so through the Chair and we'll add that data, lengthy statements, to our record of today's proceedings.

With those comments, I am pleased to recognize for a statement The Honorable Jeffrey N. Shane, Under Secretary for Policy of the U.S. Department of Transportation.

Welcome, sir. You are recognized.

TESTIMONY OF HON. JEFFREY N. SHANE, UNDER SECRETARY FOR POLICY, U.S. DEPARTMENT OF TRANSPORTATION; CHARLES C. BARCLAY, PRESIDENT, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES; JAMES C. MAY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION; ED FABERMAN, EXECUTIVE DIRECTOR, AIR CARRIER ASSOCIATION OF AMERICA; JAMES E. BENNETT, PRESIDENT AND CEO, METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, WASHINGTON, D.C.; AND BONNIE ALLIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, TUCSON AIRPORT AUTHORITY, TUCSON, ARIZONA

Mr. SHANE. Thank you, Mr. Chairman. I would like to submit a longer statement for the record.

Mr. MICA. Without objection, your entire statement will be made part of the record. Please proceed.

Mr. SHANE. Good morning, and good morning to members of the subcommittee, as well. Thank you very much for inviting me to appear before you today. Airports play an essential role in our national economy due to the services they provide and the jobs and business opportunities they create. Despite the challenges of a post–9/11 security environment, airports have benefitted from the economic recovery of the past couple of years and a concomitant rebound in air travel. Thanks in part to the efforts of this subcommittee, Federal funds for airport infrastructure have increased by 69 percent over the last five years.

In the future, we will need the airport and air space capacity to meet whatever type and level of demand the market may bring. Having the infrastructure to avoid congestion and accommodate new business models will ensure the sustainability of healthy competition in the aviation marketplace. If our aviation system is allowed to bog down, the implications for America's economic well-being would be very serious. That's why Secretary Mineta has launched a next generation air transportation system initiative to triple the capacity of our system between now and 2025.

I have submitted a longer statement for the record, and so in the interest of time I will just highlight a few key points this morning.

First, existing Federal policies and programs governing airports work well. Despite the fact that Federal funds have restrictions attached to them, our Federal airport programs have a lot of built-in flexibility and the FAA has a demonstrated track record of working with airports to maximize their effectiveness.

This hearing furnishes a welcome opportunity to discuss the new policies that were adopted in Vision 100 and begin to engage the airport community in a dialogue that will inform proposals for the next reauthorization cycle.

Airport operators have repeatedly expressed their desire for more flexibility in the way that they can use AIP funds. We're happy to note that at the Administration's urging Vision 100 included such additional flexibility.

PFCs are another substantial source of funding for airport capital development, especially at major airports. These local funds are subject to a Federal review process mandated by law, including restrictions on their use that were the result of a carefully crafted compromise between the airport and airline communities. That

compromise has been modified over the years to add new flexibility, but remains largely intact in Vision 100.

Vision 100 streamlines the Federal PFC review process and eases the requirement of consulting with airlines that have an insignificant presence at the airport. The law also includes a pilot program that will simplify the PFC application process for non-hub airports. Both of those provisions were recommended to the Congress by the Administration.

Airports are complex enterprises, and public policy, therefore, must focus on providing strong financial support for airports while ensuring fair access to airport facilities. Congress, of course, has outlined broad public policy direction on both the collection and the permissible uses of airport revenue. As a condition of receiving AIP grants, an airport must agree to provide access to the airport on reasonable conditions and to levy similar charges on air carriers making similar uses of the airport. The FAA's current policy is intended to implement a clear Congressional mandate that the use of airport revenues be limited to the capital and operating expenses of the airport, the local airport system, and other local facilities owned or operated by an airport and directly and substantially related to air transportation of passengers or property.

One other critical aspect of our work is ensuring compliance with AIP grant assurances. Some airport operators have questioned the need to retain all of the requirements currently imposed through AIP grant assurances. The vast majority of these assurances are required by statute, but we are always required to consider appropriate adjustments and to review specific suggestions; therefore, when we publish a notice in the "Federal Register" this summer to implement the new assurances required by Vision 100, we will also use that opportunity to solicit comment on all current assurances, as well.

Before I conclude, let me turn quickly to competition plans. The Department's statutory guidance requires us to consider several factors in the public interest as we develop regulations, including encouraging entry into air transportation markets by new and existing air carriers. One important tool that we use to promote airline competition is the plans that most major airports are now required to file. The Department staff devotes a considerable amount of time to reviewing airport competition plans and offering suggestions as to what actions airport officials might take to reduce barriers to entry. The competition plan process provides an opportunity for us to provide guidance on best practices and to promote robust airline competition more effectively. All of this, of course, is designed to benefit the traveling public.

Some have argued that the competition plan requirement is a significant and unnecessary regulatory burden. I can assure you, Mr. Chairman, that the department goes to great lengths to minimize that burden. We feel strongly, however, that the requirement carries significant benefits. Since the competition plan requirement has been in effect, we have seen reduced barriers to entry at many airports at which concentration had become a problem.

I have submitted with my written statement a paper that provides a list of many of the initiatives airport managers have adopted in response to the competition plan requirement. As of April,

2003, low-cost competitors had gained entry or expanded service at 29 of the 38 covered airports, resulting in greater choices and lower fares for air travelers around the country.

That concludes my summary statement, Mr. Chairman. I would certainly be pleased to answer any questions that you or the subcommittee may have at the appropriate time.

Mr. MICA. Thank you. We'll withhold questions until we have heard from all of our witnesses.

Mr. Charles Barclay, American Association of Airport Executives, you are recognized.

Mr. BARCLAY. Thank you, Mr. Chairman. We would appreciate making our full statement——

Mr. MICA. Without objection, your entire statement will be made part of the record. Please proceed.

Mr. BARCLAY. Mr. Chairman and members of the committee, thank you for this opportunity to discuss the ways airport executives believe we can improve the efficiency of the system, reduce costs, and better meet future needs of our national aviation system.

We've called our collection of proposals "airline economic deregulation," but the first thing I want to do is to thank this committee, its leaders, and its staff for Vision 100, especially the dedication and determination it took to pass that exceptional piece of reauthorization legislation in the closing moments of last year's session. It is only because of that accomplishment that we have the luxury of addressing the long-term broader issues we bring before this committee today, so thank you.

In our testimony today we revisit a few of the reauthorization debates we lost, we offer critiques of the legally required roles of some of our friends at DOT and FAA, and I suspect we may step on the toes of a few of our industry partners. It is not our intent to be ungrateful or to criticize others for doing their jobs under current law or to be argumentative. We are especially grateful for the efforts of FAA's airports office to get AIP funding out to airports under current law.

Our purpose today is to be candid and open about fundamental changes that, from our perspective, would make the system work better at less cost and be better able to adapt to change. I have three general points I would like to make about our testimony.

The first is that airports are local government creatures with all the checks and balances, public oversight, and public incentives of other government institutions, including the Federal Government. After years of slowly accepting new economic regulations, airport executives feel as if they've acquired a Lilliputian web of Federal economic regulations, large and small, that bind their hands in nearly every decision when trying to quickly and efficiently improve airport facilities.

Local government goals and incentives for providing public airport facilities are virtually identical to those that drive Federal policy-makers, so what is the long-term benefit of the duplication pointed out in our testimony's examples? Why have the Federal Government duplicate resources to regulate and re-decide local government decisions in areas where the goals are mutual government goals? Obviously, the Federal interests in our national aviation system need to be protected in law. We recommend making safety, se-

curity, non-discrimination, and the prohibition of airport revenue diversion the four corner posts of Federal requirements on airports, but then let airports make decisions within those corner posts.

The Federal Government has one like-minded, like-incentivized, responsible-to-the-public partner in aviation infrastructure, and that's airports.

My second point is that time is money. The delay inherent in adding duplicate layers of unnecessary Federal oversight to the existing layers of local procedure and oversight are very costly. Our testimony and my colleagues' examples point out the years that are lost in avoidable delays that don't change outcomes but slow the progress while escalating costs. Our members' frustration at this financial waste is evident in many of the examples they provide.

One simple case is missing a construction season in the northern States when a budget or appropriations complication in Washington delays the release of AIP funds. Why not allow construction to proceed with reimbursement authorized for eligible projects properly carried out?

Over and again throughout the years airport projects have been penalized by millions of dollars due to a wide variety of Federal funding and oversight delays that are purely procedural. Delegation of more authority to the local level is our preferred solution to these delays, but there are also a number of targeted changes that could save significant sums on future delay-driven costs, and we'd like to work with the committee on both those options.

My final point is that in airline deregulation the Federal Government determined that private shareholder-driven companies should be economically deregulated in order to unleash lower costs and greater innovation. The theory was that price and services would be policed by competition and new entry rather than government regulation. Most people would acknowledge this theory works unevenly in practice, with some markets enjoying significant competition and others left without the benefit of actual or some even potential competition. Airline deregulation is a matter of how one sees the balance of benefits and costs, and the answer a person provides often depends on their geographic place in the system.

Having the Federal Government step back from its economic regulation of airports would seem to us to be a much more modest step. In place of uneven competitive forces to police prices and services, you have a consistent, proven pattern of local government checks and balances and local public oversight to substitute in every case for Federal regulation and oversight. You can still expect the benefits of reduced costs and greater innovation at airports that can operate within broad Federal guidelines but not with the pervasive Federal regulations that crop up daily and delay—sometimes frustrate—the price, service, and improvement decisions made at airports.

Mr. Chairman and members of the committee, we look forward to working with you on these issues.

Mr. MICA. Thank you for your testimony.

We will now hear from Mr. Jim May, president and CEO of ATA.

Welcome, sir. You are recognized.

Mr. MAY. Permission to have my whole statement——

Mr. MICA. Without objection, your entire statement will be made part of the record. Please proceed.

Mr. MAY. Thank you, Mr. Chairman and members of the subcommittee. Thank you for inviting me to address the issue of so-called "airport deregulation."

In our view, the airport community has misappropriated the word "deregulation." Their confused agenda ultimately comes down to seeking less oversight on how they spent the revenue generated by passengers and other users of the system. Airports are asking for more flexibility on using Federal grant money and less Federal interference. Said another way, what they want is to be released from the obligations they agreed to when accepting Federal funding. Those obligations, by the way, were crafted to safeguard or to protect the public. That's not deregulation as I understand it.

As Congress knows well, under our national aviation scheme the Federal Government is responsible for air traffic control. Localities have the authority to decide whether and where to build airports. And the airlines determine where and how to provide service based on market demand. This three-way partnership has produced an air transportation system that is safe, more efficient, and more cost effective than any other in the world.

Airports derive revenue almost entirely from the users of the airport system. We care about how this money is spent because either directly or indirectly it comes from our customers, your constituents. This year alone we and our customers will contribute nearly $19 billion to the aviation system through taxes, airport fees, and passenger facility charges. Only a small fraction of airport revenue will come from State and local government general funds.

Now, as you know, the operating costs of an airport are covered entirely through rates and charges paid by airlines and other tenants of those airports. Airlines in that case currently pay approximately $7 billion a year in landing fees and rents. Now, some of this goes to debt service for capital improvements and the rest goes to pay for day-to-day operations of airport facilities.

Airports are, as Chip said, governmentally controlled public facilities and are subject to rules and policies designed to promote the public good. While airports are not economically regulated, they are subject to financial guidelines due to their status as government entities. Like it or not, they really are not private sector enterprises. Public airports are bound by the Commerce Clause of the United States Constitution to refrain from placing an undue burden on interstate commerce, and they are also constrained from exercising their natural monopoly power.

By accepting Federal funds, airports, like any other grantee, are obligated to comply with a specific set of requirements, including financial ones. Congress imposed these obligations on airports to protect the Federal investment of the national airport system.

As outlined in my written testimony, we believe the conditions placed on AIP grants, PFCs, and airport rates and charges should be strengthened and improved, not weakened. Airports maintain the current projected capital development needs exceed the funds available. Well, given the uncertain economic outlook and the many competing demands on the Aviation Trust Fund, I think it is more important than ever that FAA prioritize and direct funding to those

projects that result in meaningful and cost effective capacity and safety improvements. We simply can't afford to support an "edifice complex" if it comes at the expense of an efficient airport system. None of us can or should support nice-to-have-but-marginally-useful projects while critical needs go unmet. At the same time, it is essential that tax money collected to airport projects is managed carefully. Some of the rules and conditions controlling airport spending are, indeed, complex and could be streamlined, but we need to remember that their core purpose, which is to safeguard the investment in our national aviation system for the benefit of all Americans. Airports must remain fiscally responsible to the American public, as well as their tenants and local constituents.

Mindful of these considerations, we recommend the following:

First, we urge this subcommittee to take a fresh look at the allocation of AIP funds and consider making a much larger percentage of them available as discretionary grants for the most critical safety and capacity projects. As a starting point, we recommend that security projects be removed from AIP in order to free money for safety and capacity projects.

Second, we recommend the subcommittee direct the FAA to strengthen their oversight of airport spending and vigorously enforce the prohibition of revenue diversion. Further, it is high time that Congress close the loophole that allows a handful of grandfathered airport operators to continue to siphon off airport revenue to non-aviation purposes.

Finally, we recommend that all airport capital expenditures be justified by a cost/benefit analysis. While FAA has developed such a methodology as part of its selection criteria for some AIP grants, it doesn't apply at all to projects funded with PFCs. I think that situation ought to be corrected.

In summary, Mr. Chairman, airports are entrusted with spending money generated by the users of the aviation system and must be held to the higher standards of fiscal responsibility. Instead of loosening the Federal controls on these funds, we should safeguard them and maximize their impact by focusing our efforts on projects that are the most critical to the development of a safe and efficient airport system.

Thank you.

Mr. MICA. I thank you.

We'll hear now from Ed Faberman, executive director of the Air Carriers Association of America.

Welcome. You are recognized.

Mr. FABERMAN. Thank you. Chairman Mica, Congressman DeFazio, members of the committee. It is a pleasure to appear before you today to discuss an issue that is critical to the continued economic growth of communities throughout the United States, the expansion of airline competition.

I ask that my full statement be made part of the record.

Mr. MICA. Without objection, so ordered.

Mr. FABERMAN. Thank you.

As a result of the expansion, particularly of low-fare service, Americans are returning to the skies. As Secretary Mineta stated last week, "The combination of shifting demand for air travel and the emergence of more low-fare airlines has set the stage for major

change in the airline industry. Demand for low-fare service is strong and growing stronger. The changes underway now are the kind of market-based cost competition that the architects of deregulation thought would happen 25 years ago."

American travelers are searching for more affordable travel alternatives. While legacy carriers are offering lower fares and some are even pretending to be low-fare carriers, unfortunately many believe it is more important to block facilities and gates than to be profitable.

Low-cost carriers average as many as 11 to 12 turns per gate. In some situations, larger carriers only may average three to four turns per gate, or only utilize gates to park aircraft, in some cases regional jets. While in an open market system a carrier should be free to spend as much money as it wishes to control facilities, that is not the case when lack of facilities blocks competitive travel options.

While many communities have benefitted from increased low fare travel, competition remains a dream in some markets due to barriers. Today's hearing addresses one issue that has historically blocked entry into airports, the unavailability of gates and other airport facilities.

The focus placed on facility issues and requirements for competition plans has made an important difference in opening airports for new entry. This is not a new issue. In the early 1980's the department had to help People Express obtain gates and facilities at Minneapolis/St. Paul. In 1989, the Justice Department stepped in to change the availability of gates in Philadelphia and National Airport. In 1999 DOT issued a study that said, "If airlines cannot gain access, they will be unable to compete successfully." That study said also the following, "Until recently, the Department was not proactive in facilitating efforts by new entrants to gain access." We will need to be more vigilant in ensuring that airports accommodate all qualified airlines.

A Transportation Research Board study—also in the early 1990's—said that airports that are chronically short of gates and other passenger facilities for use by potential competitors should be compelled to make sufficient facilities available.

As a result of the attention paid to this issue by this committee and the Department, access problems at several airports have been addressed, allowing new levels of competition. As a result, new entrants are expanding at Boston, Philadelphia, DFW, Dulles, and other airports. There's little doubt that the requirement to file a competition plan and the Department's involvement resulted in an acceptable resolution of these cases. This was in large part the result of Congressional direction that an airport must provide a report if it cannot accommodate a request for facilities. Nevertheless, facility problems continue to exist.

We fully support Section 424 of Vision 100. Under this section, an airport only submits a report if it has been unable to accommodate a request for facilities. If the problem is resolved, the airport would not have to submit a report.

Competition plans provide important data for government oversight of the competitive marketplace. Some of the data collected, including gate utilization, type of gates, and gate availability for new

entrants, should be submitted and updated on a regular basis. This information should also be made available to the public. It is also essential that Government monitor subleasing of gates and facilities. We would also like to see the Government rank airports in terms of steps taken to enhance competition. All should have this information available.

At the same time, we would not object to a reduction in the information that must be provided to FAA under the airline competition plan requirements.

We support the request by certain airports that they be allowed to utilize various airport funds to attract new service. When airports provide marketing or other funds to attract service, it is more likely the service will work. Limitations must be placed on such a proposal, however, to ensure that this authority doesn't create new barriers.

Times are changing, and to ensure that all are able to obtain competitive, low-fare service, all parties—the Federal Government, airports, and carriers—must take the necessary actions to meet the growing demand for low-fare service referenced by Secretary Mineta.

I thank you again for focusing on issues that impact true airline competition. We believe all communities should be able to enjoy low-far service. We look forward to working with this committee to make that a reality by eliminating all barriers to entry. The founders of deregulation would not have it any other way.

I'd be delighted to take questions later.

Mr. MICA. Thank you.

We'll now hear from James E. Bennett, president and CEO of the Metropolitan Washington Airports Authority.

Welcome, sir. You are recognized.

Mr. BENNETT. Thank you, Mr. Chairman, Ranking Member DeFazio, and members of the subcommittee. I want to thank you for holding this hearing today.

I know this is somewhat off point, but I also want to thank you for holding the hearing March 16th at Ronald Reagan Washington National Airport concerning general aviation access.

I appreciate the support the committee has shown concerning the return of general aviation to Reagan National and once again affirm that the Metropolitan Washington Airports Authority will do whatever is required to ensure the secure return of this important segment of our air transportation system.

I also want to thank you for the enormous assistance you provided to airports last year when you passed the Vision 100. That bill will go a long way toward ensuring that the aviation system continues to be safe, secure, and ready for the increased demand that is already beginning to materialize. As my airport colleagues mentioned, airports understand the need for Federal regulations to ensure safety and security, to prevent unjust discrimination, and to prevent airport revenue diversion; however, over time there appears to have been a shift in the regulatory environment where the Government seems to be no longer interested in being the regulator, but appears to behave more like what I would like to call "the doer."

Airport competition plans are a prime example of the Government behaving as a doer instead of a regulator. Air21 contained a provision requiring certain large and medium hub airports to file a competition plan. If those airports failed to file these plans, they risked being ineligible to receive AIP funds or collect new PFCs for much-needed safety and capacity projects. In response to this provision, the FAA issued a 15-page program guidance letter that compels airports to collect and submit detailed information on some 62 items. In the case of the Metropolitan Washington Airports Authority, we spent nearly three months collecting this information and developing a plan for Dulles. It then took the FAA nearly seven months to accept the plan. In accepting the plan, the FAA requested that the Authority amend certain provisions of its lease agreement with the airlines that had been in place for 12 or so years and serves as the basis of securing over $2 billion in airport bonds.

In addition, the FAA took some exception to the Authority's air service development program, indicating we were not focusing enough on competitive service in existing markets and focusing too much on trying to attract new service in new markets.

Mr. Chairman and members of the committee, I suggest to you that we as airport operators, not the Federal Government, have a better understanding of the best way to promote our community in the global and domestic market. This in my opinion is an example of the regulator attempting to be a doer and not a regulator. Medium and large hub airports are very complex economic entities that have very large capital investment requirements in order to meet the capacity and safety needs of the communities in which they serve. Federal involvement in local business relationships that have been formed between local communities and the airlines they serve is not necessary. Airport operators believe in competition and encourage it at our airports. In our particular case, we spend several million dollars each year developing competition and attempting to improve air service to the Washington region. At no time has an airline ever been denied access to one of our airports as a result of the Authority's business practices. We make sure that all are treated on a nondiscriminatory basis. The airport community's view is that aviation and competition is good for you. The more you have, the more successful you will be in fulfilling your mission of serving your community.

Competition plans do not enhance competition at our Nation's airports. They are nothing more than an attempt by the Federal Government to intrude on the local business affairs of airports.

I encourage members of this committee to review the competition plan requirements and determine for yourselves whether they actually lead to competition in this Nation.

I would also like to turn your attention to another issue of most importance to the airports. I realize this committee does not have direct oversight in this matter, but I feel it important to make you aware of the issue. As the committee is aware, airports rely on a number of different sources of funds to pay for capital development projects. In our case, bonds finance about 59 percent of our multi-billion-dollar development program at Dulles, while PFCs finance 29 percent and AIP hopefully will supply 12 percent. However, Fed-

eral tax law unfairly classifies approximately 90 percent of airport bonds used for critical aviation infrastructure as so-called "private activity bonds." This classification means that these bonds are subject to the alternative minimum tax. As a result of this private activity classification, airports pay a penalty when financing major capital development programs.

Let me turn your attention to Dulles and our multi-billion-dollar program as an example of the impacts of such classifications. A key component of our Dulles program is the construction of new runways and air field improvements to support an ever-increasing demand for air transportation in the Washington region. We anticipate that since these bonds used to finance these programs are considered private activity, it will cost an additional $35 million in AMT penalties. This is $35 million that the airlines using the airport will have to pay in additional fees over time.

Runways are no different than an interstate highway system through a major city; however, under current Federal tax law the runway is considered a private activity and therefore subject to the AMT. This results in airports having to pay higher interest rates on bonds used to fund their construction programs.

Airports are owned and operated by State and local governments and they clearly serve a vital purpose. It would be very helpful if Congress reclassified airport bonds as public purpose and allowed airports to advance refund their bonds without limitation.

Again, Mr. Chairman and Ranking Member DeFazio, Ms. Norton, thank you very much for holding this hearing today. The airport community appreciates your willingness to consider some of our proposals to make airports more efficient and less costly to operate.

Mr. MICA. Thank you.

We'll hear now from our last witness, which is Bonnie Allin, president and CEO of Tucson Airport Authority.

Welcome. You are recognized.

Ms. ALLIN. Thank you, Chairman Mica, Ranking Member DeFazio, and members of the Aviation Subcommittee. Thank you for inviting me to testify. It is truly an honor to participate in this for the first time.

I would like to begin by thanking you and the members of this committee for the leadership you provided on Vision 100. Airport operators around the country are grateful for the record level funding for AIP, the budget protections, and the funding for programs that will help small communities retain and attract air service. We also appreciate the numerous provisions in the bill that will help expedite the time it takes to build runways and other capacity enhancement projects at congested airports.

Members of this committee work together to find ways to streamline the environmental review process without violating NEPA, Clean Air Act, or the Clean Water Act. We encourage Congress to take a similar approach to streamlining economic regulations while preserving those regulations pertaining to safety, security, unjust discrimination, and revenue diversion. Streamlining economic regulations will save airports, their customers, and the Federal Government valuable time and considerable funds.

Airports are owned and operated by local units of government. We are held accountable by a myriad of checks and balances to ensure that we are carrying out our fiduciary responsibilities and providing the best quality of air service to our communities.

Tucson International Airport is approaching 80 percent capacity on our air field. We are significantly beyond capacity in our terminal building. This year we'll complete phase one of a $65 million terminal expansion project that creates 80,000 additional square feet of space in our terminal to relieve congestion and accommodate projected passenger growth. We are now turning our attention to the concourses to focus on meeting ADA, security, and additional capacity requirements.

We were allowed to use AIP funds for some of the facilities associated with this project, but not others. We were allowed to use PFC funds for some of the facilities but not others.

Mr. Chairman, there has to be a more efficient way for airports to add capacity to the system. Considering the local accountability, airports should be allowed to use these different sources of revenue for any lawful project that benefits our customers and meets the four regulatory cornerstones previously mentioned. Creating a common currency that would allow the Tucson Airport Authority and airports around the country to build projects more quickly, would allow us to pass these cost savings on to our customers, including the airlines. Giving airports more flexibility would also allow us to use airport revenues to promote critical commercial air service. Today the Tucson Airport Authority and other airports in this country do not have that option.

It is critical to the economic health of our communities—in fact, they demand it—that we have financial capability to promote air service and reduce leakage to nearby airports. As airport directors, we are striving to provide that for our communities.

With help from this committee, small communities receive Federal funds to promote commercial air service as part of the popular small community air service development program. We feel that all airports should be allowed to use airport revenue to enhance airline competition and to improve air service to our communities.

In addition to giving airports more flexibility on how we can use AIP and PFC funds, it would be very helpful to streamline the PFC approval process. It is important to underscore that PFCs are local user fees approved by local governing entities. Vision 100 included a good provision that will allow non-hub airports to test alternative measures to impose PFCs. Airports participating in the program will be able to save precious time and money by allowing them to notify DOT of their intent to impose PFCs rather than forcing them to endure a lengthy application process.

If the recognition is there that requirements are a significant burden both financially and in time, why shouldn't airports of all sizes be able to take advantage of these alternative measures to expedite the PFC approval process?

The Tucson Airport Authority is considering raising its PFC from $3 to $4.50 to pay for our concourse rehabilitation project. We expect that PFC approval process will take at least nine months and could cost up to $50,000 to prepare and go through. It's simply too

long and too expensive. The money could be better used on the precious facilities that our customers need.

This committee took some welcome steps to improve the PFC process in Vision 100. We encourage the Congress and the Administration to work with airports to help find other ways to streamline the process.

As I mentioned earlier, airports understand the need for regulations that ensure safety, security, and those that prevent unjust discrimination and revenue diversion. Members of this committee worked together to find ways to streamline the environmental process when it considered Vision 100, and we hope that we can work together in the same effort to do that on economic regulation that delay airport construction projects and increase the cost.

Thank you very much, Mr. Chairman and members, for allowing me to speak today.

Mr. MICA. Thank you for your testimony.

I thank all of our witnesses. I have a few questions, and then I'll yield to some other members.

A chart was up here just a few minutes ago that showed that the money that finances the airports is 98 percent user fee—who has got that? Did I see it right—from airport users. So in a way the Federal Government is just a collection agency where the airlines are and collecting some of these fees and distributing them. That would make a case for deregulation. However, looking at the national interest, it is important that we ensure competitiveness and that we ensure certain standards be met, since we do set safety and security standards. Everyone has testified they want the Federal Government to be responsible for that.

There's criticism of the requirement of the competition plans. I think it emanated from Air21. Then we had testimony that low-cost carriers are in 29 of 38—is that major airports? Was that you? Who gave us that?

Mr. SHANE. I talked about the 29 airports that had improved the competition picture as a result of the competition——

Mr. MICA. Out of 38?

Mr. SHANE.—out of 38 that were covered by the requirement. Yes, sir.

Mr. MICA. And what do we do with the other airports to increase competition or to—it looks like we've got nine airports that are not served or do not have what's termed "adequate competition"?

Mr. SHANE. It may well be that the competition plan in those cases simply validated what had already been done. Not every airport is a problem airport. I subscribe to what you've heard from some of our airport representatives this morning, that airports are about competition in many cases.

Mr. MICA. Well, they describe the process as sort of bureaucratic. It took them three months, I think they testified, to put their report together, and then it took seven months to review. I mean, I can look at airports and see where there is competition and there isn't competition. That's not rocket science. How could we improve the process to ensure competition and have less of a bureaucratic approach that they're speaking about, Mr. Shane?

Mr. SHANE. Well, there's always an interest on our part in trying to make the process more user friendly. If, indeed, the airports are

experiencing as much of a burden as they say, I'd like to know more about why that is.

There's no question in my mind that the competition plan requirement has produced enormous dividends in terms of the quality of competition. Mr. Bennett said it has produced no—he was very categorical—no additional competition in the business. I just can't buy that. I think if you take a look at the report that we submitted, together with my prepared testimony done in April of 2003, you'll see chapter and verse, airport-by-airport, requirement-by-requirement in which airports, as a result of the competition plan process, have taken real steps to improve access to their facilities by additional airlines, new entrants, facilitating more competition.

To say that the process is perfect would be silly. I'm not here to argue that the process is perfect. I'm here to argue that the process has produced dividends, and we are more than receptive to complaints about the process, and I would be delighted to sit down with our airport operator friends and see if there are ways to make the process better.

Mr. MICA. It seems again like sort of a very complex bureaucratic process taking a long period of time and a lot of resources. We want some mechanism to create competition, ensure competition. I think that is a responsibility that we should have.

Mr. May, you weren't—well, you would like the Federal Government to stay in certain parts of this business, as far as ensuring that funds are spent a certain way. I guess you pay 36 percent in landing fees and grants, so you are an important customer of the airports.

Mr. MAY. So are your constituents, Mr. Chairman, as are the constituents of everyone here. If you were to look at this chart——

Mr. MICA. Well, they're paying the bulk of the money.

Mr. MAY. Yes, $19 billion a year in 2004 is what we project, and the reason we feel strongly that the Federal Government needs to stay invested, if you will, is that when you look at the AIP funds which are part of the trust fund, those are generated from ticket taxes and cargo way bill taxes, fuel taxes, etc. When you look at PFCs, they're collected by the airports, themselves.

Mr. MICA. But, again, for Federal, a Federal interest is to best utilize our dollars. I mean, they're pass-through dollars——

Mr. MAY. I agree.

Mr. MICA.—and for us just to be adding runways at some of the major hub airports—and we've had basically a hub, the development since deregulation has been pretty much hubbing, and a few carriers have dominated probably 30 hub airports. Then we have airports where we have Federal money and passenger money where you can bowl down the center of the runway and not hit anything probably 18 of 24 hours. There's nothing happening. That doesn't seem like a very good utilization of funds.

Now, we have done in our Federal policy and all since September 11th, the private market is altering some of that. But don't you think that we should have a responsibility to also utilize the resources, the infrastructure that we're investing in to the max?

Mr. MAY. Mr. Chairman, I think there are some very real concerns, and I suspect the airports will share them with us. If you were to look at this chart, this is where the AIP money is going,

and far be it from me to suggest that Congress inappropriately directs spending, but the reality is if you look at this most recent AIP allocation, really only about 125 million, 3.8 percent, is undesignated, discretionary funding that FAA can put against a variety of different projects. The rest of it is almost an entire entitlement program as directed by Congress. Forgive me, but what we need to do is have Congress empower DOT, FAA to take a long look at AIP funding, to take a look at PFC funding, to come up with a series of important priorities as to where we can best enhance the national capacity. It may come at some smaller airports, medium, larger hubs, and figure out the best ways to spend that money to go to the purposes for which it was intended, which is capacity, safety, security, and noise. And I think that—we talked about this in your office yesterday afternoon—I think having a plan that looks at the whole system needs for capacity is overdue, and part of the problem is that so much of that AIP money is effectively already spoken for.

Mr. MICA. Well, one of the things I think that's lacking is any kind of a national strategic aviation service plan, and that is a bigger problem, and then work and build towards that with the private sector and with the airports.

Finally, Mr. Barclay, you described a series of changes that would allow for going forward with projects and being reimbursed after the project proceeds. How would that work? It seems like you have a good idea that sometimes the Federal Congressional appropriations process or the disbursement of funds at the Federal level doesn't match with construction seasons or other projects at the local level. How would you devise something that would ensure that these projects could move forward and still not get the funds up front?

Mr. BARCLAY. I believe I think I am right that we already do this currently with land purchases, that you can purchase it, you can go ahead and purchase it and then do a reimbursement. There are some parts of AIP where that is currently already eligible. Our point is simply that if you've got eligible projects and they are properly carried out, go ahead and let them fund them with AIP. Bring AIP and PFC into consistency with each other as far as what is eligible. Then let people go ahead and build facilities that they need for safety, capacity, security, and the other reasons, and then reimburse themselves in future years if that's the best way to run the program at their airport. You could get more improvements more quickly into the system that way.

The airports today have a lot of stovepipes of financing that for different parts of the project they have to use different stovepipes of money, and so when you slow down, speed up, have a problem, it winds up creating a huge management problem over these different money streams coming in. So one of our thoughts is to go ahead and simply say, "This is all eligible. Go ahead and build it." You have to build it to the standards, but then the timing of the funding, you don't have to wait for that, which today you've got to wait until the funding is available to start the project.

Mr. MICA. OK. I have questions about market-based rates and also flexibility and AIP funding. Right now I am going to defer to other Members so they have a shot at this. I may come back.

Mr. DeFazio?

Mr. DEFAZIO. Thanks, Mr. Chairman. I'm struggling to maintain my voice, so I will be unusually taciturn here today. I just want to get to this issue with the competition plans a little bit more. We heard from Mr. Bennett it was three months to prepare and seven months to evaluate. I guess the question would be: is that in part because this was an issue of first impression that airports weren't keeping track of some of this data, most of which, it seems to me, does really go to the issues of underutilization or potential underutilization of gates or potential discriminatory financial agreements that would prevent expansion of service by new entrants? I mean, have you now established a template and the update will be easier, Mr. Bennett?

Mr. BENNETT. Mr. DeFazio, the updates are easier than the original submission; however, a lot of the time and the expense associated with competition plans is actually in some cases going through the DOT databases on fares and other information and actually paying a consultant to analyze that information to submit back to FAA and DOT in your competition plan that's showing the average fares being paid by customers in your market. In addition, they want quite detailed information about your business relationships and your use and lease agreements that you have with the airlines and how you administer those agreements, and that takes A) quite a bit of time in collecting the information and, B) trying to then put it in a format that they will then understand.

As I mentioned in the testimony, the airport/airline business relationship is extremely complex, and when you have an airline use and lease agreement that in some cases is three or four or five inches thick that deals with all types of issues in terms of how you economically deal with airlines in your marketplace and then DOT is looking for specific information within that document, it is very difficult to drill down in there, pull that information out, and then relay it to somebody in context as to what it actually means.

Mr. DEFAZIO. Mr. Shane, would you care to comment on what you perceive as the differences between this original round and what improvements or changes for the updates you're anticipating that would make this less burdensome? Or do you think it will just be inherently less burdensome?

Mr. SHANE. Well, I hope the thought implied in your question is realized, that with successive rounds it does become easier and that, in fact, the very process of drafting a lease is conformed to some extent to what everybody now knows the Federal Government is likely to look for in terms of an evaluation of the quality of those leases for the purposes of the competition plan. That would be one source of improvement. Another source, as I said earlier in response to Chairman Mica's question, is that, of course, we are prepared to work with the airport community in seeing whether there might be ways, particularly now that we have some more experience under our belt on both sides, of making this a somewhat more user friendly program.

I'm not happy to hear that it takes three months to respond to a requirement that the Federal Government imposes. In some cases, I wonder whether that's a worst case example. Does it al-

ways take three months? I would hope not. And I am unhappy to hear that it takes us so long to finally respond.

We are looking for a sweet spot. We want to get the benefits of the competition plans out there and we've demonstrated the importance of the requirement. Now what we have to do is hone the requirement such that it is not an unreasonable one in terms of the amount of time and effort that airports are required to invest in it.

Mr. DEFAZIO. One thing that he raised which I thought was kind of interesting is that they're having to hire consultants to analyze your database regarding fares to come up with numbers in that area. Couldn't you be doing that analysis on your side if you are the repository for this data?

Mr. SHANE. Yes. I don't quite understand. I'd like to hear more about that. We try to make that information as transparent as possible. It's available on a website that you can log on called "transstats," and you can manipulate the information in all kinds of ways. I thought that maybe it is because consultants have been hired that that's why it takes 200 or 300 hours to do it, because they bill by the hour. But I wouldn't want to cast aspersions on anybody.

Mr. DEFAZIO. OK. I just have one other, if I could, Mr. Chairman. This whole issue of AIP and PFC, I mean, we've had other hearings where we have heard absolutely phenomenal numbers on the needed investment over the next couple of decades to meet capacity, both on the air side and terminal side. I can't remember, but it's many billions of dollars that we really don't foresee in the funding pipeline. I'm wondering what impact people think breaking down these barriers would have. I, for one, am fairly reluctant to go there, but I'm always willing to listen to someone make a case. If anybody could sort of comment on that and make sense, we are already looking at a huge under-funding, as I understand it, on both sides of the equation under current revenue projections and current passenger load projections, how this is going to help with that? Are there airports that are just fine, that they've just done—I mean, I suppose there maybe are some that have done everything and anything they want to do that relates to AIP requirements and they're limited on their PFC capabilities, have already maxed them out, and they still can't meet the terminal needs because they are so far behind. I don't know. Does someone want to comment on that?

Mr. BARCLAY. Mr. Chairman, the needs that are showing up are $15 billion a year, so it is an enormous demand that's out there. I don't have a number for you on what, if you took all of these one- and two-year delays for each project and add them up and what kind of a dent that makes. It certainly will be significant from what we believe we're hearing from the members.

The key issue to us is just that I don't think you are going to see any difference in the outcomes. A lot of these delays wind up not changing whether or not the airport builds a runway. It just slows the series of Federal delays.—Federal procedures and reviews after all the local procedures and reviews and decisions. Same thing with the competition plan. It doesn't change what actu-

ally winds up happening; it just creates another layer of review over government employees who have the same incentives.

Competition is in the DNA of airport executives. What we do is we go out there and we try to build facilities and we want as much competition in there to serve the public as we possibly can. You'd have to. As people come to you and want facilities, you have to find a balance. You have to be fair to the existing tenants. You give access based on the same kinds of standards you have for your current tenants. Otherwise, you are creating an unlevel playing field.

So our points are that we think there should be fewer levels of review. Since you have Government employees incentivized and overseen by local public checks and balances, you can get the same outcomes and save money.

Mr. DEFAZIO. Well, you're doing OK on the first part of the answer. You shouldn't have really—I didn't ask the second part of that question. And I think you have at least challenged my understanding of some of the problems in leasing arrangements and preferential leasing arrangements that have been entered into that have unduly restricted capacity, but I've run out of time so I won't have any.

Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mr. Ehlers?

Mr. EHLERS. Thank you, Mr. Chairman. I apologize for being late. I was in a markup with several recorded votes. I had to stay in that committee. Therefore, I am not prepared to ask any questions, but I do thank you for calling this hearing. I know from my own airport manager that there are many issues that he would like to see addressed more quickly and more fluidly, and so I appreciate your calling it.

I yield back the balance of my time.

Mr. MICA. Thank you. I'll recognize Mr. Moran.

Mr. MORAN. Thank you very much, Mr. Chairman.

Concerns, Mr. Shane, with regulation—and maybe this is also a question to Mr. Barclay—do the criteria or the way that they're implemented, the hurdles, the length of time that it takes to get approval, do they vary region from region within the FAA, or is there a clear national standard and implementation is the same and the time? These concerns about the months of delays, do they vary across the country?

Mr. SHANE. There is no regional variation. In fact, I was reminded after answering the last question that I responded to that the FAA has now established a formal performance objective for itself in reviewing competition plans to be responsive within a period of 70 days, so I think the seven-month story is history at this point. At least we'll do everything possible that it is.

Mr. MORAN. Mr. Barclay, do you agree with that?

Mr. BARCLAY. Yes essentially. The FAA not addressing the competition plans, but getting the money out—works hard under current law and does a good job at that. Occasionally people run into disagreements with one individual reviewing a construction project, but in general the FAA does a good job.

Mr. MORAN. Mr. Ma you, for the time I have been in Congress I have certainly heard from the airline industry that you are over-

regulated, and so in some ways your testimony seems not inconsistent but different. It's a different topic today. But explain to me why regulation that is bad for the airline industry might be good for the airports.

Mr. MAY. As I said in my testimony, it is an interesting dichotomy. I favor deregulation, but I think the fundamental difference is that you're looking at entities that are, in fact, governmental agencies. All airports—I think almost all airports are, in fact, you know, run by cities or States or port authorities, etc., so they have—we're not talking a free market economy in that sense. They have capital expenditures that they need to make, they have operations and maintenance that they need to enjoy, but as we pointed out in the chart a little bit ago, virtually 98 percent of all of the revenue that they use for that, whether it is paying off debt service on bonds, whether it is operation and maintenance, whether it is promotion, whether it is capital expenditures, originates with Federal taxpayers. And it may be collected directly by the airline, it may be paid by the airline as a tenant, etc. So I think that we have a very specific dog in the fight, if you will, and the rules and regulations that have been established that governed spending that create the safeguards for spending are those that have been established by Congress to protect that money and assure that it's used in an appropriate way.

I think anything that can be done to streamline the process, anything that can be done to make it simpler, faster, that will allow delivery on what we don't disagree on at all, which is that we need significant airport improvements wherever possible to enhance capacity ought to be done.

But I also think that there's a reason for these rules and regulations, that the money should be spent in specific ways, and to change that is not, in my view, deregulation.

Mr. MORAN. Mr. Barclay, it would be interesting to know—and I doubt that you can answer the question—about what percentage of the costs incurred by an airport are to meet Government rules, regulations. My guess is it is a significant amount of money. I also noticed that Mr. May used a phrase that caught my attention, the Edifice Complex. Any thoughts about that story? Is there a problem out there that airports are creating, things that don't meet what Mr. May calls capacity or safety improvements, and that we're actually building monuments like, I suppose, to a local mayor or something?

Mr. BARCLAY. Yes. The Edifice Complex term is a new term, but it is an old story that we have been hearing for years that airports build too much stuff. Every time we get into a bad period of airline profitability we hear that louder, and we then ask for a list, and we say, "OK, give us the Edifice complex list, please," and we never get a list because if you get all the airlines together they can agree. You can say, "Do airports build too much?" You get everybody nodding. Then you say, "OK, should we take the Atlanta project off?" No, no. Then you have some going no and some going yes. Same thing happens when you bring up the Dallas project. So you never can get the list of projects. In fact, I don't want to hit a sore point here today, but this committee knows this issue very well when other Members of the House come to you and say, "Keep that high-

way bill total cost low, but don't cut the project in my District." We have airlines that come to us and say, "Keep the cost of airports down, but don't cut my project." That's what winds up happening in the system.

The other answer I'd give you is to say that the airlines are meeting right now with FAA about how to slow the system down this summer because we're worried that there's going to be too much demand and too little airport capacity in the system. That's not the definition of a system that's got an Edifice Complex.

We are looking at the kind of delays we had in the summer of 2000 because we don't have enough airport capacity in the country. I've got enormous respect for the men and women who run the Nation's airlines. It is one of the toughest businesses they're in, but they've got this one wrong.

Mr. MORAN. Thank you, sir. My time has expired. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mr. Weiner?

Mr. WEINER. Thank you. You know, to some degree Mr. Barclay's last comment is a good place for me to jump off. This discussion about building competition almost has an Alice in Wonderland feel if you're coming from New York. The problem there is that deregulation—and Mr. Bennett probably experiences the same thing—we in New York have more takeoffs by 9:00 than Ms. Allin has all day. And the problem that we have is that deregulation has a blind spot to the problem that we have no one who can say no if we simply run out of space. So we have a situation where local port authorities are saying, "Well, we've got to give you the space. You have a gate here. You want to take off at 8:00 you can take off at 8:00. We can't control that." And you have a situation where dozens of planes are lining up aside the runway waiting to take off, and it simply just doesn't work. There's no authority placed with anyone to make common-sense managerial decisions in the context of this new law because it is based entirely on the idea that there are obstacles of the way of airlines coming in.

Well, for those who think there shouldn't be any obstacles at all, I would invite you in, I don't know, let's say August of 2000—frankly, any time before September 11th to try taking an 8:00 shuttle that took off any time before 9:00 coming to Washington, D.C. The system simply doesn't work when you put no one in charge of making rational usage decisions.

I would argue also that it ultimately creates a safety problem. That is, there are only so many planes you can line up on a hold on the side of the road at an airport as tiny as LaGuardia or National and say, "OK, this is still a safe situation." It simply isn't.

But I'd like to ask a question about another issue of blurred authority, and that is as it relates to noise abatement and departure routes and the like. We in New York City after the crash of Flight 587 asked for and the FAA instituted a departure route to take flights out over the Rockway Peninsula from Kennedy Airport in a way that didn't cross over people's homes. The FAA, to their enduring credit, went through a long regulatory process, books were published, computers were programmed. Now we have a situation where airlines are saying no. Airlines are getting on the runway.

At 12:47 on the 28th of October America West Airline Flight 55 got an instruction from the air traffic control to take Pay-Lu 3 out and you're on your way, and they said no. They said, "Take a hike. We're not doing it." As a result it created about an hour of delays.

My question is: who has the authority to sanction that airline? Is it the local port authority? Is it the FAA? IS it nobody?

Mr. Shane, do you want to take a stab at that question?

Mr. SHANE. I would only take a stab at it with great trepidation, because I'm not sure I know the legal answer to the question. You started the question by referring to blurred authority. It may well be that there is some there, but I'm not familiar with the episode and I'd love to look into it.

Mr. WEINER. It is an episode. I actually have a list here just from one month, a long list of airlines that have said, not from safety reasons, not for weather reasons, that I was—these are folks that were assigned to take off a departure route who simply refused to take it.

Mr. SHANE. Yes. My——

Mr. WEINER. And the tower—who has the authority to go to them and sanction them or to say, "OK, well, you're not going to take off until your change your mind, or you're going to get fined"? Who has that authority? I m, part of the mantra of deregulation loses sight of the fact that at the end of the day we do want some regulatory authority, to be able to set the rules of the road and be the traffic cop. It is unclear to me. In this era of deregulation it seems like everyone is just sitting on their hands just a little bit too cautious about executing reasonable authority, and so in this case, in all of these cases in the month of October with airlines large and small who have essentially said—and this is just one month I asked for, and these are the various flights throughout the day that said what I said. I said, "Take out someone that's not safe who says it is not safe. Only do it because—" I'm sure you recognize one guys says, "I'm not going to fly this way." It has ripple effects all around the system. And so I say to me it's quite an easy concept to me. I say, well, someone sends that guy a ticket or someone says, "You can't take off tomorrow. You're out of luck." You don't believe your agency has that authority?

Mr. SHANE. No, I'm not saying I don't believe it. I think it is a series question. It sounds like a serious problem and I'd like to look into it and provide a deliberate answer.

Mr. WEINER. Thank you.

Mr. Bennett, would you take a stab at that. You at your airport, since you have so many important muckety-mucks flying and so many important people who live in your jurisdiction, you have a noise abatement procedure that says after 10:00 no one can land. Is that how it works?

Mr. BENNETT. Our noise abatement policy at Reagan National is that we have what we fondly refer to as "stage three plus" after 10:00. The airport is still open but you have to——

Mr. WEINER. What if someone violates that rule and says, "To heck with you, I'm landing here anyway."

Mr. BENNETT. At National if you violate the 10:00 p.m. to 7:00 a.m. night time noise restriction, we have a mechanism in place where we can actually—the airport authority actually levies a fine

against the offending carrier, and we track that and enforce that very tightly. The issue that I think I hear you talking about, if on a flight track, if it is done—if that flight track is developed as part of a Part 150 noise abatement program, compliance with those flight tracks is, for the most part, voluntary on the part of the pilot in command, and there really, at least from the airport authority's perspective, there is no enforcement mechanism in place if the pilot in command elects to not follow that noise abatement procedure. In the case of Reagan National, once again, our departure path is to basically follow the Potomac River to the north to avoid——

Mr. WEINER. Yes, this isn't a Flight 150. This is just the regular FAA normal everyday takeoff. You know, I've got to tell you I find it stunning that here at this panel talking about deregulation, who has the authority and complaints about each other, not using your authority correctly, that we can't—the basic question about if an airline says "take a hike" to an air traffic controller, who has the enforcement. I think that would be something—I would appreciate, Mr. Chairman, if perhaps I could ask on the record that Mr. Shane, and, frankly, anyone else who cares to weigh in on this, because at the end of the day I think some of you represent some of the airlines that are on this list of offenders, and it is a troubling, to me, problem with the concept of deregulation, the rubber hitting the road of who has the authority to do these things.

I thank you, Mr. Chairman.

Mr. SHANE. I've already committed to doing that, Mr. Chairman.

Mr. MICA. Thank you.

Mr. Hayes?

Mr. HAYES. Thank you, Mr. Chairman. Thank you for holding the hearing.

Mr. Shane, when does the FAA and DOT expect to issue its grant assurance report to Congress? And you know where the—I won't quote the verse in the Scripture, the law.

Mr. SHANE. We're proposing to put out a notice this summer that will take the Vision 100 grant assurances and ask for comments on how best to implement them. And at the same time we do that, Congressman, we are also going to open the question more broadly and say, "What can you tell us about other grant assurances that either may have outlived their usefulness or are overdoing it or can be either eliminated or reduced."

I mean, I appreciate that there are long, long lists of grant assurances that one has to undertake as a prerequisite to getting all this money from the Federal Government. It is a Faustian bargain, if you will. Through the AIP process, airports get a lot of important resources, and it is not unreasonable, it seems to me, for the Federal Government to ask, since it is a national system and since that money is the users money in the first instance, that airport operators assure the Federal Government they will comply with statutory requirements in the running of the airport. Those grant assurances are, for the most part, required by statute, not made up by the FAA.

What we'd like to do is have a dialogue with the airport community, take a hard look at the grant assurance process. If it looks as though some of it may no longer really be necessary or in the public interest, then we'll come back to the Congress and we'll

share those reactions with you, and then we can see, in the course of the next reauthorization, whether or not some of that can be reduced, if not before.

Mr. HAYES. Early, mid, or late summer?

Mr. SHANE. I'm not sure. I think it will be early summer.

Mr. HAYES. OK on timing. Mr. Bennett, March the 16th we did have a meeting—I'm asking Ms. Norton's question for her here. Two weeks and two days later after the two-week deadline that TSA imposed upon themselves to get back to us, have you heard anything from them in relationship to that hearing in regard to that hearing?

Mr. BENNETT. Mr. Hayes, no, sir, we have not.

Mr. HAYES. We've got another call in to them.

One more thing—this is a little bit off the subject—but flying Sunday air traffic controllers were telling VFR pilots that they could not give them flight clearance because they did not have any more transponder codes which they could assign to monitor those flights. Is this an indication of some capacity issues with the system we need to work on? I had never heard that before.

Mr. SHANE. You're asking me? Congressman, I hadn't heard it, either. I'd like to ask that question, as well. That catches me by surprise. It would be a capacity issue if they're running out of transponder codes. Yes. I'll come back to you with an answer, if I may.

Mr. HAYES. OK. I would appreciate that.

We've got too many IFR flights if we can't give any BFR codes out.

Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mr. Boozman?

Mr. BOOZMAN. I want to go back to the competition plan real quickly, Mr. Shane. You mentioned earlier the 200 hours that you thought might be because consultants were doing the hours. Does your staff have an hour figure for us as far as what they think it would take to complete the competition plan?

Mr. SHANE. I don't know that they do. We have imposed an hour requirement on ourselves in terms of the review, but I don't think the FAA has a gauge of what it ought to take. If I'm wrong about that, I'll certainly correct the record, but——

Mr. BOOZMAN. If, in fact, we are asking a lot of questions that come from data that you, yourselves, have, is it reasonable to ask them to give you that data back? It's not only data that you have, but sometimes that data is hard to understand.

Mr. SHANE. I would challenge that as the characterization of the process. I think that there may well be one or two questions that relate to traffic, and the traffic is collected by the Department of Transportation as it is collected, indeed, by other entities, and it is made available by the Department of Transportation to the public or anybody who wants to use it. But the vast majority of the questions are questions that can only be answered by reference to what the airport operator knows. I don't buy the suggestion that we're asking airport operators to feed back to us that which we already know about their operation.

You know, the competition plan requirement is an effort to share best practices. The Government was characterized, I guess by Mr. Bennett again, as being more of a doer than a regulator. Again, we're not attempting to do anything. What we're attempting to do is find what airports have done successfully that facilitates new entry, that facilitates the quality of competition which the public expects to find in the marketplace and make sure that if we know it works in some airports—and in many cases those measures were taken wholly out of a concern with the airport operator that there be competition at that airport—then we want to make sure that experience is shared among airports, generally. The competition plan program has produced such enormous dividends, and I would only refer you once again to the details of the report which is appended to my prepared statement. Because there is such a good story to tell, while we are more than happy to talk about whether or not we can tweak the program, make it more user friendly, not require that so many hours be spent—and I was just kidding about those consultants, lest there be any doubt. We'd be happy to do that, but not to the point where we're going to divest ourselves of the benefits that we see that have emerged from the competition plan requirement, itself. It's a good requirement and it has produced real dividends in the quality of competition in the system.

Mr. BOOZMAN. One of the problems we hear talked about is mission creep, you know, where you get into situations, and that's especially used in peacekeeping issues and things like that. Is it possible that this program's mission crept in a little bit where it is used as a club in certain areas where perhaps Congress didn't intend it to be able to held over the airports and individuals?

Mr. SHANE. I've seen the syndrome, as we all have. I don't think we have mission creep yet, but that is precisely what I'd like to take a look at. Again, we are going to be reaching out to the airport operator community. We want this program to be a program that delivers benefits, not detriments, and I think, if I can refer back to the sweet spot again, that's what we're looking for, and hopefully in dialogue with the airport operators we'll be able to find it.

Mr. BOOZMAN. Thank you.

Mr. MICA. Thank you. I've got a couple questions. I don't know if any of the remaining Members have any questions. But let me just go back to pricing and the question of pricing for some services—landing fees, things of that sort. If we went to a market-based approach, wouldn't that be fairer? And how would, like, Tucson, how would you feel about the Federal Government getting out of the pricing regulation business?

Ms. ALLIN. Mr. Chairman, we feel that the market does regulate how we deal with our airlines. We are in a situation where we are out working very hard to bring in additional air service. We have a very large leakage problem. Of our passengers, 20 percent go up the highway to a low-fare competitive airport. We do have an airline, Southwest Airlines, who provides low fares and has brought our fares down considerably in the last ten years since they have been there and provided a lot of competition and brought a lot of our customers back, but we still fight with that.

As far as our landing fees with airlines, since the improvement in our traffic our landing fees—and we are an airport that has one

of the long-term residual, which means the airlines guarantee the bottom line and pay the rates and the landing fees—and our landing fees have come down in the last 15 years because of other revenue we have been able to generate, to less than 10 percent of our total revenues. And so we are using good business practices to make ends meet and operate our facilities and develop our facilities, and the additional regulation just costs us more in staff time.

Mr. MICA. Thank you.

Mr. May, market-based pricing?

Mr. MAY. I suppose it will come as no shock to you, Mr. Chairman, that we do not support market-based pricing. I think the Congress has wisely set out a rule that says that under the operations and maintenance that the fees and rates and charges that airports can levy should not exceed their operating expenses, and I think that's an appropriate guideline to be maintained.

I think, you know, finding ways to create a competitive environment is all well and good, but it has been mentioned here a couple of times today, and I want to at least make the record clear from our perspective, that it is fine to market a facility, but there are a number of places in this country, or one in particular, where they are trying to rob Peter to pay Paul by using rates and charges revenue to subsidize new entrants into that market, and it is that particular practice that we violently disagree with.

Mr. MICA. What about the problem—now Mr. Weiner is gone, but we are going to pretty soon be at capacity back in LaGuardia and the New York market probably. Of course, O'Hare, we now have our mechanism for DOT to be the arbiter on scheduling. Do you favor that approach versus letting the market prevail on deciding landing rates?

Mr. MAY. I think there are a couple of different issues here, but we think that the voluntary agreement that has been reached by United and American at O'Hare is a very positive development and I think it has the potential to yield great results. In terms of responding to a comment that my good colleague from AAAE made a minute ago, what we're looking to do on a voluntary basis working with the FAA as we approach this summer is not try and slow down traffic across the country, but to see if we can evenly space out using a lot of the techniques that were used when we have bad weather. And so I think that, rather than trying to slow the whole system down, we're trying to improve and smooth the edges, if you will, of the whole process.

Finally, for those who suggest demand management, i.e., taxing certain times of day, for example, to control traffic I think is absolutely a non-market-based approach. We would very much oppose that approach.

Mr. MICA. Any difference of opinion, Mr. Bennett?

Mr. BENNETT. Mr. Chairman, just for recreational purposes I would probably disagree with several of those comments. Not to say that in Washington we would adopt a market-based pricing approach to our facilities, but I certainly support the concept that airports be given the flexibility to price their facilities at the market rate. What Ms. Allin charges in Tucson is very appropriately probably going to be much less expensive than what might be charged in New York. But by the same token the demand for that product

is much different in those two markets. Right now the way the rates and charges structures are regulated, airports don't have the flexibility to price their product according to demand, and that sometimes leads to a situation where you are at over capacity or you do not have the resources necessary to build additional capacity because of the restrictions on your pricing scheme. So I would support the concept of market pricing.

Mr. MICA. Mr. Faberman?

Mr. FABERMAN. Yes, Mr. Chairman, we are very skeptical of market-based programs to decide who can operate and what time they can operate. We would be against doing that in terms of LaGuardia, in terms of almost any of the airspace issues out in front of us. The reason for that is that simply means that the carrier that is willing to spend the most will have the access and the carriers that may only have a few operations and are not prepared to spend as much would have no access.

Secondly, I think it is very important to look at what is causing those capacity problems which you mentioned in your opening comments. We're being saturated in this system today by aircraft, 37-seat, 50-seat aircraft. While they certainly have a valuable place in the marketplace, they are creating problems that are reverberating throughout the competitive environment, and I think those are issues that really have to be looked at very carefully.

I will note that at one point in time everyone thought that access at National Airport and slots should be done through a market-based system, and that proved to be something that's never worked.

Thank you.

I just want to add one other small comment, and that is that we sympathize with airports that need to have to spend four, five, six, nine months to get responses and decide whether their programs are valid. We believe that the Department is working carefully to reduce that. But I also think we have to remember that there are many airlines that sometimes take one to two years or even longer to be able to get into an airport.

Secondly, as to what Jeff Shane mentioned before about the number of new entrants or competition that's increased at certain airports, that doesn't mean that those carriers that have gotten in, although that is an important first step, have competitive access and have competitive gates and can control their own gates and can run their own operations at those airports, so it is just a first step, but it doesn't mean that we've come all the way yet.

Thank you.

Mr. MICA. Mr. Barclay?

Mr. BARCLAY. Mr. Chairman, I'd just point out that in a case like New York where you can't add capacity, and once you physically run out of space you're left with what is the least worst alternative for allocating what's left. The choices are simply somebody in the Government picks the winners and losers, and you do a lottery, or you put in a market-based mechanism. I don't think you want to get rid of the market-based mechanism option that's out there. Generally with rates and charges at airports, one of the ironies that makes us smile is when we hear our friends and tenants talk about airports shouldn't be able to charge market-based prices. An

airport that builds a gate and leases it to an airline has to do that at cost under the regulations. But when airlines have that and sublease to each other, they sub-lease it to each other at market rates, not at the rates the airport leases the gates at. So there's a little bit of "do as I say and not as I do."

Mr. MICA. I appreciate your comments on that.

Mr. SHANE. Might I add one more comment, Mr. Chairman?

Mr. MICA. Go ahead, Mr. Shane. We'll let everybody chime in here.

Mr. SHANE. Well, you've asked an important question. I just wanted to make sure the record reflected that the Department of Transportation issued a notice requesting industry comment on this very question some time ago on the whole issue of market-based demand management. The comments that we received in response to that notice you will probably not be terribly surprised to hear were approximately as wide ranging as the ones that you just heard this morning, very little consensus about it.

Obviously, we have to work with all parts of the industry and find ways to manage demand, but I don't think we should overlook the most important conclusion from all that. I mean, when we—Secretary Mineta and Administrator Blakey deserve great credit, as do United and American, for the solution they found at O'Hare as a way of alleviating the congestion that we were seeing there for some time, but we shouldn't miss the point that that's really reducing the service and there are some communities that are going to lose service by virtue of that agreement. That's not a good thing.

At the end of the day we can talk about managing scarce resources, but the real objective of Government ought to be to make sure that there are enough resources, which is why we attach so much importance to the initiative I mentioned in my opening statement, the next generation air transportation system initiative that the Secretary of Transportation announced some time ago. The idea there is to triple the capacity of the system, not immediately but over time, and to do it in a way that allows the system to build up to it.

We can't expect aviation to continue to contribute to our economic wellbeing as long as we are talking about how to manage within these scarce resources the demand that is obviously outstripping what we have available to us. The real objective has to be to get beyond all of this.

Mr. MICA. I'm not sure if we're not just dividing the pie among those who already have the pie. Again, someone in Washington—I'm supposed to get a call, they just told me, in a few minutes from the Secretary I guess on the slot issue. Here's Government making decisions on who gets a slice of the pie. Coming from the private sector, I think we are going to have to look for a market-based solution. Again, private sector works this out. If Government was really interested, we'd be building a high-speed transit rail system between some of these areas and taking some of the burden out of the air, which brings up use of AIP funding, but I won't get into that now, but I will look into the private activity bond issue. I think that's probably a ways and means as opposed to our subcommittee. I appreciate your addressing it today.

Ms. Millender-McDonald has joined us. Did you have a question?

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. Of course the transportation bill is on the floor, so I have been on the floor fighting against certain amendments that will be coming in, but I thank you so much, Mr. Chairman, and I thank all of you who are here today. I just have a couple of questions, and I'm sure maybe they have been asked already.

Mr. Barclay, Mr. Bennett, and Ms. Allin, if you are suggesting that AIP eligibility should be expanded to cover the construction of gates and airline ticket areas, what about the most pressing capital development needs that are facing airports, especially the airport of Long Beach that had runways that had really very deep holes and pots in them that we were just afraid every time a plane would land whether or not it would scurry off the runway? And have airports been profitable over the last few years, given the capital, the need, the pressing needs for capital development and improvements of these airports? That's the question, along with—I think you are seeking AIP eligibility to be expanded, and for purposes that really does not speak to those issues at the Long Beach Airport that Los Angeles have.

Mr. BARCLAY. The gates are already eligible for PFC funds, the passenger facility charge funds, so we were saying make AIP the same as PFCs for those. But under both you would have to make sure that all your safety and capacity projects were finished before you went to using your monies for those kinds of improvements. But gates really are a capacity issue. They are a competition issue at many airports because sometimes you have new entrants that can't afford the cost of building a whole new area of the terminal and a gate to come in, but they'd like to come in, and the airports could accommodate that with extra flexibility in funding.

I'm sorry. I forgot the second part of your question.

Ms. MILLENDER-MCDONALD. The other one was I think, despite the regulatory issues that we have raised today, have airports been more profitable over the last few years?

Mr. BARCLAY. The airport profitability—its actually nonprofitability rather than profitability. Since all airports are government owned, they're nonprofit entities. They live just to cover their costs and to have enough reserves to make sure they stay viable. So the way you judge airports is by their bond rating and how does Wall Street look at them. Airports have moved to the front of the line. It used to be that airlines were looked at. In the days of regulation, Wall Street often looked at the airline backing of airport bonds as being the most important factor. Today, with airlines' ability to come and go and after 9/11 in particular where you've seen airline bankruptcies and problems that the industry has had, now Wall Street looks to the airport and its market. In fact, recent DOT reports have pointed out that airports have really managed remarkably well and have kept their excellent bond ratings even with the difficulties of the industry, so that's one of the bright stories of the industry.

You know, if I could take just one more minute and say that, as tough a business as the airlines have—and it is one of the most brutal businesses I think in the history of free enterprise—but one of the good things they've got is that if you analogize them to other private industry, then airport facilities are their plant and the air

traffic control system provided by Mr. Shane is their production line. In other heavy industries, you've got to have the money to build your plant and your production line by yourself before you can get your first customer, and then you have to hope you get enough customers to pay back all that fixed investment. In the airline business, government—local government at the airports and the Federal Government for the air traffic control system—fund all that up front at public financed rates, and then they allow the airlines, as they get customers, to pay for that fixed investment. So they've turned a fixed cost into a variable cost in accounting terms, and it is that one area is a big benefit for the airlines, and airports are very proud of their part in that and their role in that part of the system.

Ms. MILLENDER-MCDONALD. Mr. Chairman, I know we are about to close this hearing and I have a speaking engagement next door, so I will just submit my statement for the record and thank you so much.

Mr. MICA. Without objection, we'll include your statement.

Mr. Moran?

Mr. MORAN. Mr. Chairman, thank you. In listening to the comments by our witnesses just in recent few moments, it caused me to have an additional question just about the trends. We've been talking about capacity at the airports, capacity I assume with airlines. There's clearly a trend which I am not so fond of, of moving towards regional jets. Does that change the capacity requirements of our Nation's airports? Are we actually going to have more people flying? We're going to have more planes landing and taking off? Or is this just a re-shuffling of passengers that already are on aircraft? Mr. Bennett?

Mr. BENNETT. Mr. Moran, from the airport operators' perspective, regional jets have evolved recently to become a very important component of the air service picture at the airport; however, what it has done in many situations, including here in Washington, is that it has more or less derailed the planning theory that had gone into the airports' development up until this point. There had been a basic assumption in most airports that over time the average aircraft size would grow and you could accommodate more passengers without having a tremendous spike in the number of aircraft operations. Today that basic assumption has really changed dramatically in that the average aircraft size now, instead of growing, is actually decreasing in size, and so the number of operations obviously have to come up considerably to carry the same volume of passengers.

Mr. MORAN. Meaning the same volume of passengers, fewer—the size of the aircraft is smaller, and therefore there's more aircraft at an airport?

Mr. BENNETT. Correct.

Mr. MORAN. More operational experiences?

Mr. BENNETT. So when you look at the FAA forecast in this country where we are going to reach one billion passengers, that's going to take place with far more aircraft operations than was originally assumed years ago.

Mr. MORAN. Which I assume has consequences for how we build, construct, remodel, maintain our airports?

Mr. BENNETT. Indeed it does. Indeed it does, and it adds congestion to the air traffic system, but also to the airport environment, the runways and the taxiways and the gate areas as these aircraft have different requirements than what was assumed a few years ago as we were planning our airports.

Mr. MORAN. Yes, Mr. Faberman?

Mr. FABERMAN. Congressman, the DOT Inspector General issued a report not too long ago that showed that aircraft movement at a number of airports, including Washington National and LaGuardia, were up but total number of passengers were down. In some airports, including those two, regional jets used the same runways. There's really, in most cases, one runway, and it does slow the system down. As a result of that, there is fewer opportunities to add service at some of those airports. And in some cases, as Jim said, those kind of aircraft are critical to serve many markets out there. Larger carriers are not going to go into many of those markets. On the other hand, we're now seeing those regional jets, even 37-seaters, as a shuttle operation flying into the biggest airports in the country.

Mr. MORAN. But certainly a mixed story. Coming from Kansas, we have lots of—we'd like to see expanded service at our airports, expanded service that's more than likely going to come from regional jets, but being 6'2" and flying every week, it's not a trend I'm fond of. But even from a more provincial perspective, we'd like to see aircraft that are built in Kansas being utilized in the Nation's air system, a trend that's not occurring in this case.

I thank you for your answers. Thank you, Mr. Chairman.

Mr. MICA. I thank you. I think that concludes our questions today on a very important topic, and that's the question of airport deregulation. We appreciate the participation of our witnesses today. We may have some additional questions that we'll submit to you for the record, and ask that you please respond to them promptly.

Without objection, the record will be kept open for a period of two weeks.

There being no further business to come before the Aviation Subcommittee this morning, this hearing is adjourned. Thank you.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

Statement of
Bonnie Allin, President and CEO,
Tucson Airport Authority,
James E. Bennett, President and CEO,
Metropolitan Washington Airports Authority and
Charles M. Barclay, President,
the American Association of Airport Executives
on behalf of
Airports Council International-North America
and the
American Association of Airport Executives
Before the
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
April 1, 2004

Chairman Mica, Ranking Member DeFazio and Members of the House Transportation and Infrastructure Subcommittee on Aviation, thank you for inviting us to appear before your committee to discuss aviation and the economic regulations that govern airports. We are testifying today on behalf of Airports Council International-North America (ACI-NA) and the American Association of Airport Executives (AAAE). ACI-NA represents local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. AAAE represents the men and women who manage primary, commercial service, reliever and general aviation airports.

Airports understand and support federal laws and regulations for the safety and security, of aviation. Clear federal standards help facilitate the movement of passengers and commerce while providing a consistent level of safety and security across the aviation system. Together with standards set by the International Civil Aviation Organization (ICAO), these rules set the conditions for the development of a thriving aviation industry domestically and internationally.

Airports support four federal fundamental regulatory responsibilities: to ensure safety and security, to maintain competitive access by prohibiting unjust discrimination and to prohibit illegal revenue diversion.[1] Most other federal regulations, however, duplicate not only these requirements but also the fundamental mission of airports and the professionals who lead them. This results in higher costs, an industry less responsive to

[1] Under the Economic Nondiscrimination grant assurance 22(a), airports "will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities..." Similarly, under grant assurance 25(a), "all revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operated costs of the airport; the local airport system; or other local facilities which are owned and operated by the owner or operator of the airport...".

the dramatic restructuring currently underway, and delays in important capacity-enhancing projects.

Today's testimony focuses on several economic regulations that airports believe, if eliminated or streamlined, would provide airport leadership with more management flexibility, allow for more innovation and responsiveness during a critical period of industry change, and lower costs to airport tenants and passengers. Regulatory change would also permit airports to encourage new air service to their communities regardless of the ways that state and local governments choose to organize their airports.

The increasing burden of bureaucracy is an issue that concerns airports of all sizes. Airports believe that reform is so important that ACI-NA's Board of Directors ranked "establishing a new federal-airport partnership" as a top public policy goal for the second straight year. We therefore greatly appreciate your allowing us to make our case today and we sincerely hope that all parties – Congress, the Department of Transportation (DOT), airports and airlines – will use this hearing as a first-step toward updating the myriad of regulations, many of which add only complexity and cost to the industry.

Our recommendations streamline the Airport Improvement Program (AIP) approval process, streamline the Passenger Facility Charge (PFC) process by recognizing that PFCs are locally derived airport revenues, simplify the grant-making process by calling for a review of existing grant assurances and policies attached to them, and permit greater flexibility for airports to attract more competitive air service by the adoption of clearer policy guidance on revenue use. For each of these issues, we have offered several alternatives for committee consideration.

The Economic State of Airports

No one involved in aviation could have anticipated the challenges of the last three years. The combined effects of an economic recession, compounded by the terrorist attacks of September 11, the war in Iraq, and the outbreak of SARS have all had dramatic impacts on the financial fortunes of airlines and on airports. Airports understand that we have a symbiotic relationship with our airline tenants; that is why we supported the $15 billion financial aid package that Congress gave airlines in the aftermath of the terrorist attacks. That is also why airports continue to argue that airlines, like airports, should be reimbursed for their increased security costs, especially when those costs pertain to national security.

Airports, too, have suffered severe economic challenges. In the aftermath of September 11, historic reductions in flights dramatically cut both aeronautical (such as landing fees and gate rentals) and non-aeronautical revenues (such as parking and concessions). New security mandates, often unfunded and rarely fully funded, raised the operating costs of airports significantly. Too often, these security measures were put in place without adequate consultation with airports, resulting in less efficient solutions and additional costs incurred by airports and their users.

According to a recent DOT report, airports responded to these challenges by taking "decisive action to reduce operating and capital costs, including staff reductions, hiring freezes, work-rule changes, reductions in employee benefits, the closure of unnecessary facilities, and the deferral, and in some cases the suspension, of capital projects."[2] Preliminary data collected on airport capital projects suggests that fully 15-20% of AIP-eligible airport projects have been postponed or cancelled in the last couple of years. This amounts to approximately $2 billion to $3 billion in projects delayed or diverted per year.

Airport efforts have not been limited to helping themselves. The DOT report notes: "...in addition to reducing costs, many airports assisted their airline tenants directly, by suspending or reducing airport rates and charges for a period of time, contributing discretionary funds to help reduce airport fees, or providing air carriers with additional time to pay their assessed rates and charges."[3] That is why it is especially ironic and disappointing to hear some in the airline industry argue that airports are building costly "edifice complex projects" at their expense.

Notwithstanding these challenges, airport operators have led their communities through this period of wrenching change. While many air carriers' credit ratings are below investment-grade today, airport credit is generally rated very highly (the median rating for U.S. issues is A3, with a range from a high Aa2 to a low of B1).[4] Moody's recently reported that the financial outlook for airports is sound. FAA Administrator Marion Blakey pointed out at a recent AAAE/ACI-NA conference that "to date, no major airport has defaulted on its general airport revenue bonds or bonds financed by passenger facility fees." This record is no accident and is due to the leadership and prudent financial management of airport directors and their governing boards.

In addition to the cost-cutting measures described above, airports have been seeking help from Congress to reduce their expenses even more. With help from members of this committee, H.R. 2115, Vision 100 – Century of Aviation Reauthorization Act that Congress passed last year allows airports to use PFC revenue to help reduce past airport debt on projects that were not eligible for AIP funding. Even though that provision, by reducing the potential capital available for future projects, will cause airports to defer more capital projects, airports proposed that change as a way to reduce current costs and pass those savings on to the airlines.

Airports have also been seeking changes to federal tax laws that unfairly classify most airport bonds as private activity and prevent them from advance refunding outstanding bonds to take advantage of today's unprecedented low interest rates. Again, airports are seeking those changes to reduce their costs so they can pass those savings on to the

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[2] See U.S. Department of Transportation *Impact of Air Carriers Emerging From Bankruptcy on Hub Airports, Airport Systems and U.S. Capital Markets,* December 2003, p. 9.
[3] Ibid.
[4] Of the three below-investment grade ratings, two are assigned to project financings. Information from Moody's Investor Service, *US Airport Sector Outlook: Sector Expected to Stabilize With Continued Recovery Trends*, February 2004, p. 2.

airlines and passengers. We hope our friends in the airline industry will join us in these and other airport-led efforts to reduce costs.

Finally, it should be pointed out that airport landing fees are not going up. To the contrary, landing fees – as a percentage of operating costs – have remained remarkably constant over the past 30 years. According to the Air Transport Association's Quarterly Airline Cost Index, landing fees accounted for only 2.3 percent of airline's operating expenses in the second quarter of 2003 – the latest quarter available. That is about the same amount carriers spent on food and beverages during the same period and about the same percentage carriers spent on landing fees in 1971.

According to the ATA, labor and fuel make up almost 50 percent of the airline's operating costs. During the second quarter of 2003, labor costs were over 37 percent of the airline's operating expenses. During that same period fuel accounted for 12.6 percent of airlines operating costs. That percentage could increase even more as the price of fuel continues to rise. It is a misplaced and self-serving criticism to target airport costs as a significant factor in the ailing nature of selected airline balance sheets.

The Role of Airports in the Aviation Industry

Whatever their ultimate organizational form, almost every airport in the nation is owned and operated by states, counties, cities and/or independent governmental authorities. In the United States, airports are public bodies with the goal of providing affordable air service to as many destinations as possible for their surrounding communities. Airports are creatures of local government, and there is an effective system of checks and balances placed on airports. Airport directors are held accountable by their boards, local governments and local communities for the sound financial management of their facilities and their ability to obtain competitive air service for their community.

Airlines were deregulated in 1978. Airports, even before many airlines, were some of the first supporters of deregulation then and continue to support it today. Great expansions in routes and services at lower fares have benefited passengers and communities alike. During the "airline-centered era" air carriers provided much of the capital financing for the industry and, therefore, sought and received a long-term financial backstop for their investments. Many regulations placed on airports today are relics of that period before deregulation.

Airlines often retained control over an airport through mechanisms such as exclusive-use gates, residual financial systems, and majority-in-interest clauses, all designed to protect their investments in the airport. In the battle for competition, many policymakers apparently feared that airports were being used as just another device of incumbent carriers to thwart competitive access to aviation. Reports by DOT, the General Accounting Office (GAO) and others highlighted complaints by low-cost carriers that were unsuccessful in their attempts to acquire gates and other facilities.

For several years, however, many airports have moved away from these airline-centered practices to measures that establish greater airport control over gates, financial systems, use and lease agreements, and the non-aeronautical side of the airport. These moves have been made possible by the stronger credit ratings and access to capital that airports enjoy today. Because airports are tied to the community instead of to a specific group of shareholders, they have an incentive to maximize the utilization of their facilities to allow for the greatest number of flights and passengers as possible regardless of airline. Even in communities with a substantial presence by one dominant carrier, airports are encouraging and enjoying a more diverse carrier base, leading to more competitive air service.

Mr. Chairman, this committee provided extraordinary leadership in passing important project streamlining provisions in Vision 100. These measures will retain environmental protections such as clean air and clean water requirements, but will expedite the review process to help permit airports to meet demands and lower costs.

Unfortunately, however, the welcome gains made in Vision 100 to reduce the time it takes to build runways and other capacity projects at congested airports are being offset by increasing numbers of regulations causing delays in other parts of the process. We urge the committee to continue project streamlining by turning its attention to the regulations in the economic area that accomplish little, foster delays and thwart the goals of a sound and viable aviation industry.

The extent to which Congress, DOT, airports and airlines can work collectively to simplify the regulatory burden faced by airports will help shape the ability of airports to meet these local goals and the compatible national goals of security and safety, a competitive industry, and relieving congestion. If we are successful, airport projects will be completed faster and at lower costs, which will aid in reducing congestion and allow airport directors to deal with the myriad of other challenges they face.

Provide Airports with Flexibility on How They Use AIP Funds and PFCs

Unlike many other transportation entities, airports generate most of the revenue they use for capital development themselves through airport bonds, revenues generated from airport fees, rates and charges, and – at smaller airports – state and local contributions.[5] Whether through ticket taxes, locally derived PFCs, or other revenues garnered at the airport, the passenger pays for just about everything in the aviation system.

One of the most important sources of funding for airports of all sizes is AIP. On behalf of airports around the country, we would like thank the members of this committee for their leadership in providing record levels of funding for AIP in Vision 100. These funding levels – coupled with budget protections contained in the bill – will go a long

[5] Airport capital projects in 2002, according to the FAA, derived their revenue from airport bonds 59%, AIP 20%, PFCs 14%, state and local contributions 4% and airport reserves and revenue 4%. For larger airports AIP will be smaller percentage, for smaller airports, a larger percentage.

way toward ensuring aviation safety and enhancing capacity as the number of passengers using our aviation system continues to rise.

As all of you know, airports use AIP funds, which are derived from passengers, to pay for a variety of capital improvements including runway and taxiway construction, navigation aids and airfield lighting necessary for aviation safety. Airports, however, are routinely prevented from using AIP funds for revenue producing and competition enhancing terminal areas such as gates, ticket counters and concession stands.

The Airport & Airway Trust Fund, which funds the AIP program, provides key resources for the aviation industry and enables airlines and airports to operate successfully. User fees dedicated to the operation of air traffic control, facilities and equipment, research and development, and airport infrastructure benefit the public using the system and the industry that profits by it. Airports don't agree with some critics that these fees are "taxes" equivalent to sin taxes on commodities such as liquor or cigarettes. The user fees and subsequent expenditures, simply put, enable the industry to exist and function.

PFCs are another source of revenue for airports. The PFC program opens a small window of opportunity in federal proscriptions against charging passengers, allowing airports to impose local fees on airline passengers in order to pay for the development of facilities that they and air carriers use at that airport. Airports may use PFC revenues for AIP-eligible projects. Unlike AIP funds, however, airports are also allowed to use PFCs to pay for interest on airport bonds and for terminal development such as the construction of gates and airline ticketing areas.

Airports appreciate the flexibility that Congress provided to financially distressed airports in Vision 100 that allows them to use their PFCs (with the approval of the Secretary of Transportation), to help reduce past airport debt on projects that were not eligible for AIP funding. This measure, when implemented, will lower airport costs and help reduce the charges to carriers using these airports. There are, however, additional steps that Congress could take that would give airports more flexibility on how than can you use revenue from AIP and PFCs.

Create a Common Airport Currency: Each source of revenue that airports use has its own strings attached that can create significant hurdles for airports. Ideally, airports would prefer what some call an "Airport Euro" – a common currency to eliminate multiple rules and regulations and permit airports to use AIP and PFC funds for any lawful capital project. This would simplify both the management of airport finances and, even more importantly, reduce the costs of regulatory compliance.

Allow Airports to Use AIP Funds to Construct Gates: Airports are permitted to use PFC funds to construct gates, airline ticketing areas and passenger check-in facilities provided that they are not used by carriers in exclusive long-term lease agreements -- the type of agreements from which airports are moving away as long-term agreements expire. However, these same items are not eligible for or routinely denied federal funding under AIP, even though they are directly tied to capacity.

If there were a common currency, airports would be allowed to use AIP funds for PFC-eligible capacity capital projects like gates. This would enhance competition and simplify project financing considerably since airports would not have to segregate monies and await the receipt of funds according to different schedules and approval processes. By making AIP consistent with the PFC requirements, AIP would be subject to the requirements for nonexclusivity of contractual agreements, carryover provisions and competitive access just like PFC-financed gates.

Allow Airports to Use PFCs to Construct Projects that Are Eligible for Funding with Other Sources of Airport Revenue: PFCs are locally generated funds that airports use to finance capital development projects at their facilities. As we mentioned, airports are required to use PFC revenue to preserve or enhance safety, security, capacity and to reduce noise or enhance competition. If those needs are being met, airports should be allowed to use PFCs to invest in commercial facilities including terminals, cargo and maintenance facilities, hangars and certain other buildings. It is important to remember that because of airport-supported restrictions on illegal revenue diversion, the net proceeds from these revenue-producing areas would be available to reduce costs to other users of the airport including the airlines. This, too, could be accomplished by creating a common currency.

Allow Airports To Be Reimbursed for Building AIP-Eligible Projects: Airports should be allowed to build AIP-eligible projects with other airport revenues and be reimbursed with AIP funds later. This would help expedite the construction process, reduce costs and reduce charges to users. This would be particularly helpful when funding for the Department of Transportation is delayed past the beginning of the fiscal year, for example, or when a single year's AIP allocation may be insufficient.

Eliminate Restrictions on How Airports Use AIP Funds for Noise Mitigation: We regret one provision in Vision 100 pertaining to AIP. Unfortunately, Congress adopted a provision barring the FAA from approving a Part 150 airport noise compatibility program if the program included mitigation measures below 65 dB DNL. While we appreciate the FAA issuing guidance indicating that this would only apply to AIP funds, the provision was an unwarranted intrusion into airport-airline-community relations.

The airport that was clearly the target of this initiative had received airline approval to spend AIP monies on their noise mitigation program; by doing so, the airport and airline avoided lawsuits and were able to get agreement to construct a new runway. After completion of the runway, the airline lobbied Congress to terminate the very agreement it had made with the airport and community (the agreement was also codified in the FAA record-of-decision for the new runway).

Streamline the PFC Process

ACI-NA and AAAE have long believed that Congress should lift the federal cap on PFCs to help airports meet current and future development needs as well as passenger demand.

As we indicated, in this era of airport-centered capital development, PFCs are an important, competition friendly tool that keeps debt off airline balance sheets. For the next authorization period, PFCs should be part of the discussion about how the industry finances the level of capital development necessary to expand the industry while avoiding congestion.

For this reauthorization cycle, ACI-NA estimated that the capital needs of airports were roughly $15 billion a year.[6] This level of funding requires significant amounts of airport debt that carriers help finance through fees assessed on their operations and facilities. Thus, in many ways, it is more a discussion about the preferred alternative for financing projects than about the merits of a PFC-increase.

Short of lifting the $4.50 cap on PFCs, Congress can take additional steps to streamline the PFC process. Vision 100 included a provision that requires airports to consult only with those carriers whose passengers would be charged a PFC. That is a step in the right direction. But more needs to be done to make the PFC process more efficient and to expedite the construction of capital infrastructure projects at congested airports.

Give Airports More Control Over the PFC Process: Airports may assess a PFC after a period of consultation with airlines that serve the airport and review of the PFC applications by the DOT (including FAA.) In at least some instances, however, the review process has been bogged-down at DOT with federal government employees substituting their judgment for the judgment of airport professionals in the field.

In one recent case, for example, a small Pennsylvania airport wanted to construct a terminal with PFCs but was told their concourse was too wide. When asked why, the airport director responded that he would like to have the option of adding a moving sidewalk down the middle if the airport experienced growth and terminal congestion in the future.

The DOT's answer was that the airport had to either put the moving sidewalk in immediately or narrow the width of the concourse. DOT ignored the director's plea that the cost of either of the DOT requirements was too high. Unfortunately, this story is all too typical in its micromanaging and belief that DOT reviewers know better than the airport on how their facilities should be designed.

This dispute helped to delay the approval of the PFC application, and the construction of the terminal, by more than one year. DOT should leave the decisions on how best to respond to future growth to the airport professionals. If the airport certifies that an eligible project is designed to enhance capacity that should be enough.

Eliminate Duplicative Comment Periods: Airports are, understandably, required to consult with airlines at their facilities about their plans to submit an application to the FAA to charge PFCs. Airlines have an adequate amount of time to let airports know

[6] This estimate was coordinated with the General Accounting Office and the Federal Aviation Administration. The FAA estimate of $9.2 billion a year included only AIP-eligible projects (see above).

whether they agree or disagree with the proposal. Then airports are required to submit those comments – both positive and negative – along with the application to the FAA. This consultation process seems to work well.

This consultation process provides airlines with ample opportunity to comment and potentially raise objections to an airport's PFC application. However, there are other opportunities to comment. For instance, there is a 30-day Federal Register comment period. Additionally, airlines can comment during the environmental reviews and master planning stages. These comments are almost always repetitive of those received earlier in the project approval process and added no additional value to the decision on whether to build the facility in question. We should strive to end all unnecessary duplication. At the very least, the duplicative Federal Register comment period should be eliminated to help expedite the PFC process.

Expedite PFC Approval Process for All Airports: Vision 100 included a provision allowing non-hub airports to test alternative procedures to impose PFCs. Specifically, the bill allows airports participating in the program to notify DOT of its intent to impose PFCs rather than subject those airports to a lengthy application process. The participating airport can then impose the PFCs within 30 days unless DOT objects. This alternative procedure will cut the PFC process by months.

The provision in Vision 100 is a welcome change because it can take more than nine months for airports to gain approval and begin collecting PFCs. That is simply too long. By reducing the kind of intensive review of airport engineering decisions cited above and by allowing all airports to take advantage of these alternative procedures, Congress and DOT have the opportunity to expedite the project approval process again. We urge the FAA to implement this procedure as soon as possible and to allow airports of all sizes to take advantage of these alternative procedures to expedite the PFC approval process.

Eliminate the Distinction Between PFCs: Current law requires projects at large- and medium-hub airports that are financed by $4.00 and $4.50 PFCs to meet several "significant contribution" criteria. This was included in AIR-21. The experience to date has been that this two-tiered approach is unnecessarily complex and should be eliminated.

Eliminate Unnecessary Competition Plans

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), which Congress passed in 2000, included a provision that prevents certain large- and medium-hub airports from receiving AIP funds or collecting new PFCs unless they file competition plans with DOT. According to the report accompanying the bill, the purpose of that provision is to require airports to demonstrate how they will provide access to new entrant carriers and allow incumbent carriers to expand. Of all the regulatory requirements impacting large and medium hub airports, none receives as much opposition as the requirement that airports file competition plans.

The competition plan requirements delay capacity projects, are costly to complete, and do nothing to make aviation more competitive. The Miami International Airport is one of the large-hub airports that is required to file a competition plan. The airport has more than 90 carriers, offers gates on 30-day leases and is attempting to complete a multi-billion dollar capital improvement program to add facilities for its carriers. Yet, the Miami International Airport is still required to file a competition plan; wasting time, energy and resources. If for whatever reason a competitiveness issue should arise in Miami, DOT and the FAA have all the authority they need to investigate the matter without requiring the airport to go through this exercise.

Like the members of this committee, airports want more competition at their facilities – not less. Airports spend a significant amount of time, energy and resources trying to convince carriers to provide service to their communities at the lowest fares possible. Airports realize that competition is the key to their efforts to enhance air service and encourage carriers to keep their fares down. For the upcoming ACI-NA air service development meetings in Portland Oregon this June, ACI-NA will be welcoming at least 28 airlines and well over 100 airports seeking additional air service for their communities. Airports around the country are doing all they can to attract and retain air service. In fact, under permissible rules (see below under revenue use), airports often subsidize new entrants and new routes into their local markets.

Even if you remove the requirement for competition plans as we suggest, under current law the DOT and the FAA possess all the authority they need to deal with competitive access issues at airports. Under the requirement that airports make their facilities available on a reasonable basis to all carriers and to not discriminate, any carrier may file a complaint with the DOT if it is denied access to a gate or any other facility. DOT can investigate the complaint and, if it finds an airport is violating this requirement, it can withhold the airport's AIP funding. So, in addition to be unnecessary, this requirement is yet another example of needless duplication.

While we understand the goal that Congress had in mind when it created this requirement, it has led to unintended and bureaucratic consequences. The provision in AIR-21 on competition plans is just over a page in length. The FAA turned what seemed to be a simple requirement into a 15-page Program Guidance Letter that tells airports to submit detailed information on more than 60 items. Some airports have informed us that the DOT treats these program guidance recommendations as requirements.

Most of this data that DOT requires is difficult and expensive for airports to obtain. Moreover, much of the data that airports are required to submit to DOT in their competition plans comes directly from that agency. For example, DOT requires airports to provide data "showing each carrier's local passengers, average fares, market share and average passenger trip length," "fare trends," and "number of city-pair markets of 750 miles or less" and others. Because DOT already has this data, it is especially mystifying as to why the agency requires the airport, and not the airlines or its own statistical agency, to spend considerable resources to repackage the information.

The "review" itself is also used by DOT to assess whether or not it approves of the airports' overall business practices. The department has neither the mandate nor the expertise with which to undertake this review.

This requirement – to extract and decode data from DOT only to report it back to the agency – is just one example of the total disregard for the burden these regulatory requirements impose. According to an ACI-NA survey, it took some airports more than three months to complete. Some airports tell us that it took DOT nine months to review their competition plans causing long delays in their capital infrastructure projects.[7]

ACI-NA and AAAE urged Congress to eliminate that provision when it considered the FAA reauthorization bill. Unfortunately, Vision 100 expanded the competition plan by requiring airports to notify DOT if they reject a request from an airline for access to gates or other facilities. This requirement duplicated again the "reasonable access" requirement and promises, if poorly implemented, to cause additional disputes about interpretation and foment yet more delays in the project approval process.

This provision is doubly misdirected because it does not include airlines that often control access to gates and barter their use among themselves. At many airports, long-term lease agreements with carriers restrict the airport from controlling gates and prevent them from granting gate access to new carriers. In addition, the airport itself may well have perfectly legitimate business reasons to deny a request for a gate. If, for example, the carrier is insolvent, or if it wants exclusive access to a gate despite the fact it would not use it productively, and is likely to use its control in an anti-competitive way, these would be sound reasons to reject a request.

These provisions, if permitted to stand in their current form, will further delay important capital development projects at some of the nation's busiest airports. We encourage members of this Committee to eliminate these costly and unnecessary requirements and/or to work with the DOT to reduce their burden or, at the very least, to establish reasonable time-lines for agency review.

Simplify the Grant-Making Process

In accepting AIP revenue, airports agree to "grant assurances" that specify the conditions under which the federal money may be spent. In order to receive federal funds, airports must give DOT written assurances that the airport will be available for public use without unjust discrimination. Airports must also give DOT written assurances that revenues generated by the airport must be used for the capital or operating costs of the airport. Airports support those grant assurances.

There are numerous other grant assurances that meet laudable public policy goals. Like other federal agencies, airports are required to comply with federal labor laws such as the Davis-Bacon Act, which sets the minimum wages that contractors use. Airports also

[7] See *Comments of the ACI-NA and AAAE,* in the matter of Agency Collection Activity Under OMB Review: Federal Aviation Administration (OMB Control No. 2120-0661), September 2, 2003.

comply with the Small Business Act, which ensures that small and disadvantaged businesses are used to construct airport development projects and to operate concessions in airport terminals.

We appreciate the committee's role in eliminating "The Governor's Certificate," a provision that required the governor in a state with a project to certify that it would be built and operated in compliance with Clean Air and Water requirements. Now, the FAA should move as quickly as possible to eliminate this grant assurance to faithfully execute the law and intent of Congress.

The value of other grants assurances is also questionable. For instance, Vision 100 included even more unnecessary restrictions on airports. Now, large- and medium-hub airports cannot receive AIP funds unless they make a copy of the airport's layout plan and airport master plan available to metropolitan airports organizations. Metropolitan planning organizations already have access to that information in the environmental review process, but now it is another condition placed upon airports to receive federal funds.

Vision 100 also requires airports to submit a written assurance to DOT indicating that if an airport and an aircraft owner agree that a hangar should be built at the airport for the aircraft and at the aircraft owner's expense, the airport must grant the aircraft owner a long-term lease. One has to question the need for such a provision and – more importantly – whether it is an appropriate condition that should be placed on an airport seeking funds for a completely unrelated project.

Review Current Grant Assurances: Stephen M. Quilty, an associate professor in the Aviation Studies Program at Bowling Green State University, has written extensively about airport funding and grant assurances. He stated, "the purpose of the grant assurances is to balance three competing but equally important public interests: the interest of the airport operator to manage his or her local affairs, the interest of the FAA to ensure federal funds are effectively used to meet the need for public air transportation, and the interest of government to promote social objectives...."

It is clear that many grant assurances help to ensure that federal funds are being well spent. Again, airports strongly support those requirements. However, many airport operators around the country argue that the first leg of the three-legged stool that Professor Quilty described is becoming shorter and shorter with more and more conditions placed on airports seeking federal funds for capital development projects.

ACI-NA and AAAE suggest that DOT or the General Accounting Office review all airport grant assurances to help determine which ones are necessary and which ones are extraneous. After that review, we recommend that DOT make legislative recommendations to Congress on grant assurances that should be changed, clarified or eliminated. As part of this review, we hope that the DOT will assess, too, whether the grant assurances appropriately apply to federal funds (AIP), federal authorized, locally imposed funds (PFCs), and/or airport-generated revenue.

Prevent DOT From Using Grant Assurances Retroactively: Airports deserve to know what the meaning of these grant assurances are *before* accepting them. In several cases, particular DOT/FAA policies or interpretations of federal law imposing regulatory restrictions were not in existence when an airport sponsor executed a federal grant agreement.

Using the loosely worded AIP grant assurances, DOT/FAA has on occasion retroactively applied new guidance or regulations interpreting those assurances. This action is fundamentally unfair and inappropriate because it rewrites after the fact the terms of specific contractual agreements entered into between an airport sponsor and the federal government.

Nowhere is this clearer than the agency's use of a grant assurance to withhold AIP monies to the Naples Airport Authority (NAA) in Florida. In November 2000, NAA adopted a ban on the operation of noisy Stage 2 aircraft. The FAA initially determined that the airport met the Airport Noise and Capacity Act of 1990 (ANCA) and DOT's requirements to file a plan to ban the operation of the noisiest Stage 2 aircraft.

NAA won three federal lawsuits and two state court lawsuits upholding its Stage 2 ban. Nonetheless, DOT after the fact declared NAA's action unreasonable even though Congress has specifically authorized the procedure. The DOT's reasoning said that the federal court case did not apply to them, since they were not a party to the case, and that just because the airport completed the Part 161 process (DOT's regulatory structure for implementation of ANCA noise restrictions), this didn't necessarily make NAA's measures "reasonable." This matter is currently under appeal, awaiting action before the Federal Circuit Court of Appeals in Washington, D.C. In the meantime, the NAA has spent millions in legal fees and has had over $2 million withheld from AIP. This is a disproportionate and inappropriate way for regulators to issue and enforce standards.

Here, as in so many other areas, DOT and the FAA need to design standards in advance that airports can meet. This will allow for more flexibility in managing local facilities and avoid the needless expense of the courts to solve regulatory questions. DOT regulations should be transparent and prevent airports from having to guess or predict what particular grant assurances mean. By being transparent and by following clear congressional intent, DOT in this case would have saved an airport valuable dollars and allowed it to focus on its efforts to attract air service, which has been withdrawn by and large since 9/11.

Revenue Use

Provide Airports with Clear Guidance on Revenue Use: As we mentioned previously, in order to receive federal funds, airports must give DOT written assurances that revenues generated by the airport must be used for the capital or operating costs of the airport. ACI-NA, AAAE and airport operators around the country strongly oppose the unlawful diversion of airport revenue for non-aviation purposes.

In recent testimony before the House Appropriations Subcommittee on Transportation, Treasury and Independent Agencies, the DOT Inspector General identified revenue diversion at five large airports.[8] It is important to note that these investigations have yet to be concluded, and we do not necessarily agree that revenue diversion has reached even this small level or that it is being properly defined or applied. Airports need DOT and FAA to craft a reasonably defined policy on revenue use and diversion. Once that happens, our organizations would be pleased to work with airports so they understand the rules on revenue use and diversion.

We note that compliance is made easier when there are bright lines and clear policies surrounding these issues. In addition, not all of these issues are of the same gravity; one small-hub, city operated airport recently agreed to settle with the FAA after it was found to have a tennis center and several athletic fields on airport property. While a compatible land use for the purpose of aviation, the recreational facilities were challenged for "not paying fair market value for the use of airport property."

Allow Airports to Use Airport Revenue to Attract Commercial Air Service: As currently interpreted by the DOT and FAA, grant assurance 25(a) on airport revenue restricts the ability of airports to offer incentives to air carriers to begin service to a particular community. That is because the DOT and FAA interpret these incentives as revenue diversion. While the incentive is for an aviation purpose, the revenue does not go directly either to the capital program or the operation of the airport despite the fact that the new routes could offer competitive service to either existing carriers or to nearby airports.

Airport sponsors that are general-purpose municipalities may use funds from a non-airport source to provide direct subsidies.[9] However, airport sponsors governed by a special-purpose airport authority cannot provide direct subsidies to air carriers because all of the funds generated by the organization are considered airport revenue subject to the revenue use policy prohibitions. This restriction places those airports such as Sarasota-Manatee at a competitive disadvantage.

In addition to discriminating among different types of airports, the existing policy is needlessly complex, leaving many airports in the position of having to ask the FAA each and every time they want to begin a marketing program. The complexity can be seen by the fact that airport operators can waive landing fees to attract new air service, but they cannot pay any direct subsidies – even for limited periods – to air carriers in order to attract new commercial air service or new entrants. The difference between not collecting revenue, and paying a subsidy, is a difference without economic distinction.

In the current economic climate of reduced operations by many U.S. airlines, U.S. airports, particularly small and mid-size airports, need to be able to use all available

[8] See *FAA's FY 2005 Budget: Opportunities to Control Costs and Improve Effectiveness of Programs,* March 17, 2004, pp. 33, 34.

[9] For example, in a city operated airport, the city's economic development department could offer subsidies and because they didn't use airport money, it would not be seen as a prohibited use.

marketing tools to attract new service. Congress allows small communities to receive federal funds to subsidize service as part of the Small Community Air Service Development Program. Why should the DOT and FAA forbid airports from doing what the Congress itself funds?

All airports – regardless of airport sponsor status – should have the option of paying direct subsidies to carriers in an effort to enhance air service. Airports should be limited only by the requirement for non-discrimination; any promotional or marketing arrangement offered to one carrier should be available to others willing and able to expand or start service. ACI-NA and AAAE recently filed comments to the FAA, suggesting it use the petition filed by Sarasota-Manatee Airport Authority as an opportunity to simplify its existing policy as we recommended above.[10]

Rates and Charges

Airports must comply with a detailed rates and charges policy that includes 68 separate subsections – not including 12 that the DC Circuit Court invalidated in 1997 and which DOT has yet to rewrite. Airports believe that rates and charges should be fundamentally deregulated, except for those provisions that protect against the diversion of airport revenue and assurances against unjust discrimination. Airports, like other organizations that manage infrastructure and offer their facilities at a price to users, are in the best position to set pricing regimes in order to pay for the costs of establishing and maintaining their facilities. And because all revenues are kept "on the airport," all the incentives go toward fair pricing for the use of facilities and services

Such de-regulation would, for example, help airports construct new gates in anticipation of new entrant or low-fare carriers wanting to provide service at their facility; under the present policy, airports cannot use their revenues to build new terminal facilities and gates in anticipation of new air service. Since the industry declines that began in 2001, some airports may have sufficient gate capacity to accommodate new entrant carriers. However, the number of passengers using the aviation system is, once again, increasing, and the FAA is predicting that we will reach 1 billion passengers by 2014. As enplanements continue to rise and aircraft take-offs and landings increase at an even faster pace, airports need the option of building more gates.

Reclassify Airport Bonds and Allow Airports to Refinance Bonds

As we mentioned previously, airports rely on number of different sources of funds to pay for capital development projects including AIP grants and PFCs. Despite record level funding for AIP, the largest source of funding system-wide for capital development projects by far is generated from airport bonds.

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[10] See Comments of ACI-NA and AAAE, *Petition of Sarasota-Manatee Airport Authority to Allow Use of Airport Revenue for Direct Subsidy of Air Carrier Operations,* Docket No. FAA-2003-16277, 68 Federal Register 62651 (November 5, 2003)

Federal tax law unfairly treats most airport bonds as "private purpose" even though these bonds finance public facilities, and the revenue generated by these facilities is returned to the airport to help defray costs to the airport users. Prohibitions against illegal revenue diversion ensure that this money stays on the airport for a public purpose, but the tax laws have yet to catch up and recognize this fact. We note that private toll roads are treated as public purpose, but public airports bonds used to build new runways are treated as private.

Private purpose bonds that airports use to finance runways, taxiways and other critical capital development projects at airports are subject to the Alternative Minimum Tax (AMT). Because the vast majority of airport bonds have their interest taxed under the AMT, issuers of debt are required to offer a higher interest rate (historically between 10 and 20 basis points but today approaching 50 basis points) in order to build in the effect that taxes have on the buyers. This has became an even more important issue since last year's tax cuts left millions of additional Americans facing for the first time AMT.

The result is that airports such as Dallas Fort Worth International will have to spend nearly an additional $68.8 million in interest costs to finance their capital development program. Multiplied by hundreds of airports, constructing billions of dollars of projects, this is an added expense that is unfair and burdensome to airports. Without relief, airports have no choice but to pass those additional costs on to airlines and other airport tenants, which ultimately will result in higher fares to passengers.

Airports are owned and operated by state and local governments, and they serve a vital public purpose. Congress should reclassify airport bonds as public purpose and allow airports to advance refund their bonds without limitation. Doing both would save airports in financing costs and allow them to take advantage of today's historically low interest rates. In a time when airport users are clamoring for real, short-term relief, and the government regulatory framework makes it difficult for airports to respond, these changes are real, positive, immediate, and significant in their impact on what an airport must charge its users to remain in business.

We recognize that tax law is not under the jurisdiction of this committee. However, restrictions on airport bonds are emblematic of the tangled web of economic statutory and regulatory requirements airports face.

Eliminate Unfunded Federal Mandates and Reimburse Airports for New Regulations

Since September 11, airports have worked closely with FAA and, now, TSA to enhance aviation security. Airports have not always been reimbursed for those actions. At a time when airports are trying to cut costs to accommodate struggling airlines, unfunded federal mandates only exacerbate the financial challenges facing the aviation industry. We encourage Congress and the Administration to work together to eliminate unfunded federal mandates and reimburse airports for new regulations.

Provide Airports with Necessary Funds to Install EDS Machines: Airports should not be forced to divert money from aviation safety and capacity projects to pay for new federal security requirements including the installation of Explosive Detection Systems (EDS). These are national defense initiatives and, as such, are federal government responsibilities. Recognizing that, Congress has appropriated some funds necessary for EDS installation. However, TSA has issued only eight Letters of Intent to airports while between $5 billion and $6 billion is likely to be needed to meet the costs associated with permanently installing EDS machines in airports of all sizes across the country.

Reimburse Airports for Complying with New Security Regulations: Airports should also be reimbursed for costs associated with meeting federal security-related requirements. Airport operators cannot continue to absorb additional security costs without serious consequences to capital improvement programs and other airport operations. Airports should be reimbursed for federal mandates such as providing law enforcement officers at screening checkpoints, conducting random car searches in times of elevated alert status, and increasing perimeter security patrols.

Require FAA and TSA to Pay for Space the Agencies Use at Airports: Airport operators strongly believe that the FAA and TSA should continue to pay for the space they use at their facilities just like other airport tenants. This income is particularly important to small airports that have limited sources of revenue.

Reimburse Small Airports to Implement New Safety Regulations: On February 10, the FAA released the long awaited Final Rule to FAR Part 139. The FAA's rule will require airports serving small communities to meet new safety requirements. The final rule is scheduled to go into effect on June 9, 2004.

Airport operators are concerned that the additional operational expenses of this rule will impact their ability to attract air service and retain the air service they already have. The FAA forwarded a report to Congress outlining the impacts that this rule will have on small communities. We encourage Congress to review the report and the impact on small communities before the rule becomes final.

Current law requires the FAA to set aside $15 million from the AIP program every year for four years to help pay for the capital costs associated with the final rule. However, it is the recurring operational costs that airports must live with long after the capital funds are expended that will impact small communities the greatest.

In its report to Congress, the FAA suggested that the impacts on many communities will be minimal because the increased expenses could be paid out of the Essential Air Service (EAS) program. EAS funding should be used to subsidize commercial air service to small communities as Congress intended when it created the program – not to offset the cost of new regulations. The Administration is already proposing deep cuts to the EAS program in fiscal year 2005. Congress should ensure that DOT makes funding available outside of the EAS program to help small airports comply with these new safety regulations.

Chairman Mica, Ranking Member DeFazio and members of the House Transportation and Infrastructure Subcommittee on Aviation, thank you for inviting us to participate in today's hearing. All of us at ACI-NA and AAAE look forward to working with you on ways to simplify the regulatory burden on airports. Streamlining the regulatory process will build on welcome provisions contained in Vision 100 that expedite the time it takes to build new airport construction projects. It will also give airports the flexibility they need to meet the challenges ahead and be prepared for the increasing number of passengers who will be using our aviation system in the years to come.

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
AVIATION SUBCOMMITTEE

Airport Deregulation
April 1, 2004

Testimony of Edward P. Faberman, Executive Director

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COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
AVIATION SUBCOMMITTEE

Testimony of Edward P. Faberman, Executive Director
Air Carrier Association of America

Chairman Mica, Ranking Member DeFazio, Members of the Committee – It is a pleasure to appear before you today to discuss an issue that is critical to the continued economic growth of communities throughout our country, the expansion of airline service by low-fare carriers.

As a result of the expansion of competition, particularly from low-fare carriers, into new domestic markets, Americans are returning to the skies. As Secretary Mineta stated at the FAA Commercial Aviation Forecast Conference in Washington, D.C. on March 25, 2004:

> ... the combination of shifting demand for air travel, and the emergence of more low-fare airlines, has set the stage for major change in the airline industry... demand is still off, demand for low-fare service is strong and growing stronger... We think that the changes that are underway now are the kind of market-based, cost competition that the architects of deregulation thought would happen 25 years ago. Consumers are driving these changes – and that, ultimately, is a very healthy development.

Secretary Mineta also stated:

> So, what does the future hold?...Simply put, it means that, at least right now, carriers charging the lowest fares and maintaining the lowest cost are profitable, requiring the legacy carriers to make fundamental changes – especially in their cost structure – to survive in a more competitive marketplace.

American travelers in communities from throughout the country are searching for more affordable travel alternatives. The ability of low-fare carriers to offer price and service alternatives has increased demand for their services. While legacy carriers are now offering lower fares and some are even pretending to be low-fare carriers, according to Secretary Mineta for these carriers to be profitable, they must also make fundamental changes to their cost structure. Since a few carriers believe that it may be more important to block competition rather than be profitable, some of these carriers hold on to existing airport facilities or limit the availability of facilities although they have reduced operations.

Low cost carriers average approximately 9 daily turns per gate. At some airports, those numbers may be as high as 11 or 12. At the same time, at some congested airports, larger carriers may average 3 to 4 turns per gate and, in some cases, only utilize gates to park aircraft. With the dramatic increase in regional jet flights at some airports, the 3 to 4 turns per day may be with 50 seat aircraft. While in a open market system, a carrier should be free to spend as much money as

it wishes to control facilities, that is not the case when lack of facilities blocks competitive travel options.

In a speech in the beginning of March, Secretary Mineta stated, "A healthy transportation sector is essential to President Bush's efforts to keep America on track for a more prosperous future...Transportation has never been more important to America's economic future than it is right now." (Commercial Club of Chicago, March 10, 2004)

While many travelers and communities have benefited from increased low-fare travel opportunities, true competition remains a dream in some markets because of barriers that continue to block entry and expansion. A number of factors continue to block true deregulation and today's hearing addresses one issue that has historically limited expansion of entry by low-fare carriers into airports - the unavailability of gates and other airport facilities. This is not a new issue; it is a problem that has existed since deregulation.

The focus placed on facility issues and the requirement for competition plans has made an important difference in opening airports for new entry. This is not the first time that government has attempted to address this issue. The requirement that competition plans be submitted and reviewed has changed the environment.

For example, in the early 1980s, the FAA and the Department had to help People Express obtain gates and facilities at Minneapolis – St. Paul International Airport in order to serve that airport.

On July 27, 2000, Joel Klein, Assistant Attorney General, Antitrust Division, U.S. Department of Justice ("DOJ"), during testimony before the Senate Commerce Committee, noted that the government has a responsibility to review and challenge the sale of facilities if the sale would result in a lessening of competition.

> In addition to challenges to mergers and acquisitions of stock, the Division has also challenged acquisitions of assets that it concluded would be competitively problematic. The Division has moved to block acquisition of gates or slots when it thought such acquisitions would lessen competition, as demonstrated by its challenges to Eastern's proposal in 1989 to sell gates to USAir at the gate-constrained Philadelphia International Airport and Eastern's proposal in 1991 to sell slots and gates at Reagan Washington National Airport to United.

In 1989, Secretary Sam Skinner noted that DOT recognizes the potential for airport gate abuse:

> Earlier this year, DOT threatened to file an anti-trust suit against US Air – the dominant carrier airline in Philadelphia – if the airline went ahead with plans to purchase an additional eight gates from Eastern for $70 million. The threat worked, thereby allowing outsider Midway Airlines to acquire Eastern's assets and establish a competing hub at Philadelphia.
>
> David Martindale, "Gates Games", *Airline Business Magazine*, October 1989.

Airline Business Magazine (October 1989) included the following:

> In January, AOCI conducted a comprehensive survey of its US members to assess the availability of gates. Results of the study are being released this fall. . . . One objective of the AOCI survey was to learn how many airports could provide a hypothetical new entrant with at least three adjacent gates during the busiest hour of the day. Quite simply, the results of the AOCI study make a mockery of [DOT's] theory of contestability.
>
> Among the anti-competitive airport gate tactics employed by the US airlines are:
> - Hoarding gates.
> - Sub-leasing gates.
> - Blocking new gates.
> - Destroying old gates.

The need to promote entry of new entrants into closed markets was recognized as an essential part of deregulation. As Alfred Kahan noted:

> The key to lower prices and improved efficiency is competition, and the key to competition is competitors...A downward zone, without entry, would not reliably produce lower prices, since the threat of entry — not charitable motives — is the only sure incentive for carriers to reduce their prices. And upward fare freedom — again, absent freedom of entry — poses an immediate threat of exploitation of consumers in all those markets where regulation under the present Act has failed to create competition. The proposed bill would make it easier for carriers to enter new markets in three important ways, and for that reason, more than any other, we support it.
>
> Testimony of Alfred Kahn, Hearings before the Subcommittee on Aviation, House Committee of Public Works and Transportation on HR 11145 (Airline Regulatory and Reform Hearing) March 6, 1978

The Deregulation Act emphasized the importance of entry into all airports. Competition and new entry are the backbones of the airline deregulation. In order for deregulation to continue, we must adhere to the following:

> (10) Avoiding unreasonable industry concentration, excessive market domination, monopoly powers...
>
> (13) Encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry. (49 U.S.C. §40101)

A number of DOT studies during the past several years have cited gate and facility problems as a factor that blocks competition and entry.

> Airline deregulation can work well only if market forces can discipline the pricing behavior of all air carriers. As documented in numerous academic and government reports, significant new entry in concentrated airline markets results in lower airfares, often dramatically lower. But if airlines cannot gain access to gates, baggage claim areas, passenger check-in and hold rooms, and other essential airport facilities on reasonable terms, they will be unable to compete successfully against air carriers that do have such access. Moreover, unless there is a reasonable likelihood that a new entrant's short-term and long-term needs for gates and other facilities will be met, it may simply decide not to serve a community.
>
> [U]ntil recently, the Department was not pro-active in facilitating efforts by new entrants to gain access to airports or in monitoring airports compliance with the reasonable access assurance. We will need to be **vigilant** in assuring that airports meet their legal obligations to accommodate all qualified airlines. (p. 30)[Emphasis added]
>
> FAA/OST Task Force, Airport Business Practices and Their Impact on Airline Competition, October 1999, Access Is Essential, p. vi

> ...airports that are chronically short of gates and other passenger facilities for use by potential competitors should be prompted by the federal government – and even compelled through the withholding of federal aid – to make sufficient facilities available...The allocation of airport gates and aircraft parking positions – necessary for enplaning and deplaning passengers, loading and unloading baggage and supplies, and refueling and servicing the aircraft – would seem to be straightforward and uncontroversial. Yet there have been repeated complaints that shortages of available gates at some major airports – especially hubs – are an obstacle to airline competition. As with slots, there is concern that incumbent airlines are dominating scarce gate space to the detriment of rivals and potential entrants...In the committee's view, limited access to airport gates can be an obstacle to entry that warrants close monitoring; DOT should take remedial action when airport operators fail to ensure that gates are being used and supplied efficiently.
>
> Entry and Competition in the U.S. Airline Industry Issues and Opportunities, special Report 255, Transportation Research Board National Research Council

We share the TRB's belief that providing prospective entrants with access to gates and other facilities on reasonable terms results in more competition, which in turn, results in lower average fares and better service for air travelers.

> An air carrier's financial viability often depends on serving key business and leisure markets, which requires securing reasonable access to airport gates and other facilities.
>
> DOT Response to the TRB report, Oct. 24, 1999

In March 1998 testimony, John Anderson, Director of Transportation issues at GAO, stated in his testimony before the Senate:

> We reported in October 1996 that operating barriers at key hub airports in the upper Midwest and the east, combined with certain marketing strategies of the established carriers, had two effects on competition. The operating barriers and marketing strategies deterred new entrant airlines and fortified established carriers dominance of those hub airports and routes linking those hubs with nearby small- and medium-sized-community airports.

The above referenced reports and statements acknowledge that airport facility problems have blocked new entrants from establishing competitive operations at numerous airports. As result of the attention paid to this issue by this Committee and the Department of Transportation, access problems at several airports have been addressed allowing new levels of competition. During the past several years, low-fare carriers have advised the Department about facility problems at a number of airports. In most of those cases after receiving the complaint from a carrier, the Department and FAA officials raised the facility problems with airport officials. In some cases, the Department and FAA officials visited the airports in question. In about every case, the Department/FAA involvement in the carrier's "complaint" resulted in resolution of the facility need. As a result, new entrants are expanding at BOS, PHL, DFW, and other airports. There is little doubt that the requirement to file a competitive plan and the Department's involvement resulted in an acceptable resolution in each of these cases. This was, in large part, the result of Congressional direction that an airport must provide a report if it is unable to accommodate a request for facilities.

As a result of the success of these efforts, we fully support:

SEC. 424. COMPETITION DISCLOSURE REQUIREMENT FOR LARGE AND MEDIUM HUB AIRPORTS.

> Section 47107 is amended by adding at the end the following:
> `(s) COMPETITION DISCLOSURE REQUIREMENT-
>
> > `(1) IN GENERAL- The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.
> >
> > `(2) COMPETITIVE ACCESS- On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate

> one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that--
>
> '(A) describes the requests;
>
> '(B) provides an explanation as to why the requests could not be accommodated; and
>
> '(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.
>
> '(3) SUNSET PROVISION- This subsection shall cease to be effective beginning October 1, 2008.'.

Under this Section, an airport only submits a report if it has not been able to accommodate a request for gates or other facilities. By the way, the request could come from any carrier. Our experience has been that most airports are now taking steps to provide some access when requested. If resolved, the airport would not have to submit a report. Therefore, this provision is not unreasonable and must remain in place to support the establishment of barrier-free airports.

Having addressed the issue of competition plans, there are other requirements and factors that should be examined in connection with monitoring airport actions to promote competition.

In reviewing airport actions, there is a need for the government to obtain and review certain information. Having said that it is important that the information collection requirements placed on all parties be held to the minimum necessary to determine whether a carrier is being treated fairly as it attempts to enter or expand at an airport.

The competition plans that must be submitted under Public Law 106-181 provide important data for governmental oversight of the competitive marketplace. Some of the data collected, including gate utilization, numbers of gates, types of gates, and gate availability for new entrants should be submitted and updated on a regular basis. Moreover, this information should be available to the public. It is also essential that the government monitor subleasing of gates and facilities. It is not unusual to learn that gates have been subleased from one large carrier to a marketing partner although a smaller carrier was not given an opportunity to obtain those same facilities.

We would like to see the government rank airports in terms of steps taken to enhance competition. The industry should have this information available and it should be known to local and state officials as well as to members of the public.

At the same time, we would not object to a reduction in the information that must be provided to FAA under the airline competition plan requirements. The FAA should also explore the possibility of waiving some of the reporting requirements for airports if no complaints have been filed against those airports about inability to accommodate a new entrant.

One other issue that needs to be addressed is the request by certain airports that they be allowed to utilize various airport funds to attract new service. Our experience has been that when airports provide marketing or other funds to attract new service, it is more likely that the new service will

work. These local funds are important since a carrier entering a market needs time to build a market for its services and to address competitive efforts. These funding efforts have been successful in attracting legacy and new entrant carriers. It is for this very reason that we believe that the DOT small community grant program has been highly successful. In some cases the Department did not have to provide all of the approved funding since the new service was so successful.

We agree that the government should consider changes to the existing regulations that would allow airports to utilize airport funds to attract new entrants that will lower fares if the airport has obtained matching local funds and the carrier is prepared to take some of the risks.

Times are changing and to ensure that all are able to seek competitive low fare service, all parties – the government, airports and carriers must be able to change some policies and requirements to expand the joys of airline deregulation.

I thank you for again focusing on issues that impact true airline competition. We believe that all communities should be able to enjoy low-fare service. We look forward to working with you to make that a reality by eliminating all barriers to entry. The founders of deregulation would not have it any other way. I would be delighted to take any questions.

Statement of
James C. May
President and CEO
Air Transport Association of America, Inc.
Before the
Subcommittee on Aviation of the
Committee on Transportation and Infrastructure
United States House of Representatives
April 1, 2004

Mr. Chairman and members of the Subcommittee, thank you for inviting me to appear before you today to address the issue of so-called "airport deregulation." In our view, the airport community has misappropriated the word "deregulation" and applied it to their agenda of seeking more freedom and less oversight of how they spend other people's money. Now I'm generally in favor of deregulation, and this industry is saddled with more regulatory requirements than any I've ever been involved with. I don't doubt that airports have some legitimate complaints in this department, but what they are talking about under the guise of "deregulation" is not the kind of regulatory relief that we can support. I hear that airport trade associations have been asking their members for examples of "bad regulations" that they find particularly "unnecessary and burdensome." In this context, airports are asking for more flexibility on using federal grant money and less federal interference with how they spend airport revenue. Said another way, what they really want is to be released from the obligations they agreed to when they accepted federal funding. That's not "deregulation" as I understand it, and it's not something that this Subcommittee should entertain.

I. INTRODUCTION AND BACKGROUND

The federal government has played a vital role in our air transportation system since 1926, when Congress passed the Air Commerce Act. Under our national aviation scheme, the federal government is responsible for air traffic control, but localities have the authority to decide whether and where to build airports, and the private sector airlines determine where and how to provide service based on market demand. This three-way partnership, which also acts as a series of checks and balances, has produced an air transportation system that is the envy of other countries and is safer, more efficient and more cost-effective than any other in the world.

Airports derive their revenue almost entirely from users of the airport system. The airline industry is concerned about how this money is spent because, for the most part, it is *our* money or our customers' money, either directly or indirectly. As shown on the accompanying graph (CHART 1), airlines will contribute nearly $19 billion to the aviation system through taxes, airport fees and the Passenger Facility Charges (PFCs) that we collect from our passengers on behalf of the airports. As of 2001, most airport revenue was generated by rents, landing fees and concessions at that airport, while another 10.5 percent came from PFCs. (CHART 2) Less than two percent of airport revenue came from state and local government general funds. The remainder came from grants drawn from the Aviation Trust Fund, which is funded by passengers, shippers and airlines through ticket, cargo and fuel taxes. (CHART 3) Federal investment in the aviation system is not supported by general tax revenue, but by these system-wide user fees.

The operating costs of an airport are covered entirely by the users of that airport through rates and charges paid by airlines and other tenants, and are not subsidized by the federal government. Airlines currently pay approximately $7 billion a year in landing fees and rents. Some of this goes to debt service for capital improvements (as discussed later in this testimony), but the rest goes to pay for day-to-day operations of the airport facilities.

Airport operations can be self-sufficient because airports are not required to shoulder the entire cost of capital improvements. Federal support, both through grants-in-aid and outright transfer of federal military facilities to localities for use as public-use airports,[1] has been an essential component of airport development. Capital expenditures, as distinct from operating costs, are the shared responsibility of all users of the air transportation system.

Commercial service airports in this country are owned and operated by government entities – states, local governments or authorities acting for a state or local government. They don't operate like private-sector enterprises because they are *not* private-sector enterprises. Airports are public facilities, developed and maintained with large infusions of public funds, and as such, are subject to rules and policies designed to protect that investment and promote the public good. Of course, airports are also regulated with respect to safety and security. However, "airport deregulation" is a misnomer: "deregulation" is generally understood to mean *economic* deregulation, but airports are

[1] For example, Chicago O'Hare International Airport still bears the location identifier from its past life as Orchard Field (ORD), a military installation; similarly Orlando International Airport bears the identifier MCO, from McCoy Air Force Base. These ceded lands were transferred on the condition that a public-use airport would be operated at the site.

not subject to *economic* regulation in the first place. Economically regulated industries – which until 1978 included the airlines – typically are subject to governmental controls on price, service and entry into (or exit from) the market. The federal government has never regulated airports in this way. Just look at the subpart entitled "Economic Regulation" in Title 49 of the U.S. Code covering aviation – with the exception of Essential Air Service and slot controls at a handful of highly-congested airports, these chapters have nothing to say about airports.[2]

While airports are not *economically* regulated, they *are* subject to financial guidelines, due to their status as governmental entities. Public airports are bound by the Commerce Clause of the U.S. Constitution to refrain from placing an undue burden on interstate commerce. Although superficially DOT's Rates and Charges Policy may look like economic regulation, the requirement that airport rates and charges be reasonable does not stem from any attempt by Congress to regulate how airports conduct their business, but from the recognition that unreasonable airport charges or taxes on travelers burdens interstate commerce in contravention of constitutional law.

Furthermore, as a result of accepting federal funds, airports are obligated to comply with a specific set of requirements, including financial ones. Congress imposed restrictions on airport revenue use and prohibited unjust economic discrimination against potential airport users as a condition of receiving grants, and airport recipients agreed to abide by these restrictions. These conditions are necessary to protect the federal investment in the airport system infrastructure.

[2] 49 U.S.C. §§ 41101-42101.

II. AIRPORT FINANCES

As mentioned, airport operating costs are covered entirely by rents and landing fees paid by airport tenants, typically according to a formula set out in an Airport Use and/or Lease Agreement. Capital improvements are financed through a combination of public and private funds. Commercial service airports in the U.S. average capital expenditures of approximately $13.5 billion per year. Of this amount, Airport Improvement Program (AIP) grants provide approximately $3.4 billion per year, or about 25 percent of the total capital revenue stream. State and local grants amounting to approximately half a billion dollars annually represent about four percent of the total capital revenue stream. At current collection rates, Passenger Facility Charges generate approximately $2.1 billion per year, or 16 percent of the capital revenue stream. On average, about $7 billion in new revenue bonds are issued per year, accounting for approximately 52 percent of the total capital revenue stream. This debt is typically repaid via landing fees and terminal rents collected from the airlines serving the airport. Finally, about half a billion dollars in airport revenues (landing fees, terminal rents and concessions fees) make up the remaining four percent, mostly for "pay as you go" or cash-based capital expenditures – typically projects of less than $2 million. (CHART 4) Airlines and their customers ultimately pay for almost all airport capital expenses either directly or indirectly.

A. Airport Improvement Program

AIP grants are not "local dollars" or "airport resources." They are drawn from the taxes and fees paid by users of the aviation system – passengers, shippers and airlines – to support the development and maintenance of the system. This money is literally held in trust for the American people. The Airport and Airway Trust Fund, the predecessor to

the Aviation Trust Fund, was created in 1970 "to insure that the air user taxes are expended only for the expansion, improvement and maintenance of the air transportation system."[3] By the end of fiscal year 2003, the U.S. Treasury had collected $142 billion from airlines, passengers and shippers. This money goes to support the air traffic control system, FAA operations, research and airport development. (CHART 5).

In establishing first the Airport Development Aid Program (ADAP) and then the AIP, Congress recognized the importance of airports as components of our national aviation system. Because not all airport proprietors could raise sufficient money to keep pace with the growing demands of the system, a federal grant program was created to help "fill the gap" between future infrastructure needs and currently available capital. Over time, the Aviation Trust Fund has provided much of the capital to build the miles of runways necessary to connect the communities in this country to each other and to the world.

The AIP is not a no-strings-attached hand-out – it is an investment in transportation infrastructure. The Aviation Trust Fund was modeled on the Highway Trust Fund, and like federal grants to states in support of our national highway system, AIP grants are given to airports in recognition of the critical role that they play in facilitating the movement of people and goods. The return on this investment comes in the form of public access to the U.S. air transportation system. The public investment is further repaid by the ripple effect of a large civil aviation sector that ultimately drives 11 million jobs and nine percent of the U.S. gross domestic product.[4] Under the current "closed

[3] H.R. Rep. 91-601(Oct. 27, 1969).
[4] Global Insight/Campbell-Hill study measuring the National Economic Impact of Civil Aviation (2003).

loop" approach to financing airport development, the users pay and the users benefit through continuous reinvestment in the infrastructure, with oversight by *all* stakeholders – the Federal government, the airlines and the local governments. The result is an equitable and largely self-sustaining system that has worked, and worked well.

The FAA is charged with making sure that the money Congress allocates from the Aviation Trust Fund to the AIP each year is spent for the purposes Congress identified: safety and capacity enhancements.[5] When Congress established the AIP, it set out criteria for the use of the funds and required written assurances from airport recipients committing them to observe these criteria. As with any federal grant program, conditions are placed on the recipient to ensure that funds are spent in compliance with federal law, as well as to prevent the funds from being misused for unauthorized purposes. In fact, the majority of the grant assurances that airports enter into when they accept AIP grants are based on federal statutes that apply to *all* recipients of federal funds and that aim to carry out important federal policies like protection of civil rights and the environment.

The conditions directed specifically at airports, particularly the assurance that the airport will be available for public use on reasonable conditions and without unjust

[5] AIP grants also can be used for security projects at airports. Since the events of September 11, 2001 and the subsequent creation of the Transportation Security Administration, it has become clear that airport security is a matter of national defense, more appropriately funded through general revenue. See this testimony at pages 17-18. Certain noise mitigation projects are also eligible for AIP grants, but these are linked to airport capacity to the extent that noise complaints present one of the biggest impediments to community acceptance of capacity expansion projects. *See* Report to the U.S. Congress on Environmental Review of Airport Improvement Projects, U.S. Department of Transportation, May 2001.

discrimination,[6] and the assurance that the revenue generated by a public airport will be used for the capital or operating costs of that airport,[7] reflect the history of federal investment in our nation's aviation system. The requirement that airports will be accessible for public use on a nondiscriminatory basis ensures that the federal investment will truly serve the public interest and that *all* users will have access to the system they helped to finance.[8]

The requirement that revenue generated by federally-funded facilities be reinvested in that facility is a recognition that airports, as units or authorities of local and state government, are under constant pressure to provide financial support to other areas of government. Absent the prohibition on "revenue diversion," airports could draw money from the Aviation Trust Fund for airport projects while using airport-generated revenue for general government purposes. This Subcommittee is well aware of the efforts of the City of Los Angeles to extract money from Los Angeles International Airport (LAX) in the mid-1990s,[9] and in fact, we understand that the FAA is nearing conclusion of its investigation into the transfer of certain funds (eminent domain proceeds) from LAX to the City related to the acquisition of property and property rights used to construct the Century Freeway.

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[6] 49 U.S.C. § 47107(a)(1).
[7] 49 U.S.C. § 47107(b)(1). Airport revenue may also be used for the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. *Id.*
[8] A related grant assurance prohibits the recipient from granting exclusive rights at an airport. 49 U.S.C. § 47107(a)(4).
[9] In Report Number R9-FA-6-001 (October 30, 1995), DOT's Office of Inspector General determined that $32.7 million had been diverted through various means from LAX to the City from fiscal 1992 through fiscal 1994. Report Number R9-FA-7-005 (March 7, 1997) found additional diversions between September 30, 1996 and January 31, 1997.

More recently, the Sarasota-Manatee Airport Authority petitioned the FAA for a change in the Revenue Use Policy to allow them to use airport revenue to subsidize air carrier service. The use of airport revenue for general economic development is clearly prohibited under federal law,[10] and the FAA has correctly characterized direct subsidies of air service as general regional economic development and promotion,[11] a view that is apparently shared by the Sarasota Chamber of Commerce.[12] Direct subsidies distort the market and interfere with Congressional intent to allow the market to determine air service at a particular airport.[13] More importantly, using airport revenue generated by capital provided by airlines and other users of the aviation system to promote and support regional economic growth would be precisely the kind of diversion of revenue that the grant assurances are meant to guard against. The existing Revenue Use Policy is entirely even-handed in its application: regardless of its governing structure, an airport may receive financial assistance from local or state governments or from private organizations to subsidize air carrier service, but may *not* use airport revenue for this purpose.[14] Prior to changes in the laws governing airport revenue, local governments that were also airport sponsors could and did pass off regional economic development as an airport expense. Under the current requirements, local governments that wish to stimulate

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[10] 49 U.S.C. § 47107(l)(2)(b);

[11] 64 Fed. Reg. at 7710.

12 Letter from Steve Queior, President, Sarasota Chamber of Commerce to Norman Mineta (November 24, 2003).

[13] With the limited exception of the Essential Air Service program, Congress has adopted a policy of "placing maximum reliance on competitive market forces," 49 U.S.C. § 40101(a)(6). The Department of Transportation has explicitly recognized that "Congress determined that the public would benefit if each airline was able to choose which markets it would serve in response to market demands." Dep't of Transp., Love Field Service Interpretation Proceeding, Order 98-12-27.

[14] Of course, even if funds for subsidies are obtained from another source, the airport sponsor must still comply with its grant assurances by ensuring that any such subsidies are non-discriminatory, do not grant exclusive rights, and do not otherwise compromise the airport's rate structure.

economic development by subsidizing air service may still do so, but they must fund the program out of general revenue or private sources.

Because money is inherently fungible, once an airport has accepted federal assistance, it is impossible to identify where the public investment ends and "airport resources" begin. Since most airport capital projects funded with AIP grants have a useful life of twenty years or more, it is disingenuous to suggest that the federal money is no longer being used. It is the federal investment that allows airports to continue to generate revenue.[15] Congress recognized this when it extended the duration of the revenue-use requirement indefinitely in the 1996 FAA Reauthorization Act.[16] The change was made because "revenue diversion burdens interstate commerce even if the airport is no longer receiving grants," and to "make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants."

Airports are now asking for relief from obligations that they incurred as part of a well-understood deal, under which the federal government would finance, and local and state governments would develop, the airport infrastructure needed to complement the federally-controlled airspace system. They need to live up to their part of the bargain.

[15] H.R. Rep. 104-714 (July 26, 1996) at 38; *quoted in* 64 Fed. Reg. 7699 (Feb. 16, 1999).
[16] *Codified at* 49 U.S.C. § 47133.

B. Passenger Facility Charges

The Anti-Head Tax Act of 1973[17] explicitly recognized that passenger taxes and airport fees have the potential to place an unreasonable burden on, and discriminate against interstate commerce if not reasonably related to the operating costs of the facility.[18] In the late 1980s, airports argued that capital requirements far outpaced available funding, and in 1990 won the right to impose a Passenger Facility Charge (PFC).[19]

Naturally, this exception carved out from the Anti-Head Tax Act and its underlying Constitutional principles is narrowly defined and subject to certain rules. While PFCs may be imposed at the option of the proprietor, the *use* of PFCs is overseen by the FAA so as to avoid the kinds of abuses that led to the passage of the Anti-Head Tax Act – that is, a tendency by some local governments to tax the nonvoters who travel to and from their cities.

With PFCs, Congress struck a balance between giving airport proprietors an additional means of raising capital needed for airport development, and preventing local and state governments from imposing an undue burden on interstate commerce. PFCs were conceived of as a *supplement* to AIP grants, one that would allow airports to undertake improvements without draining the Aviation Trust Fund or diverting funds from other worthwhile and necessary projects. From the beginning, however, Congress expressed its concern that PFCs not be viewed simply as a new general revenue stream for airports:

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[17] *Codified as* 49 U.S.C. § 40116.
[18] The requirement that airport charges be reasonable is also found in the grant assurances of the Airport and Airways Improvement Act of 1982 (codified at 49 U.S.C. § 47107).
[19] Airport Noise and Capacity Act of 1990; *codified as* 49 U.S.C. § 40117.

> The Committee expects that PFCs will be approved only to the extent necessary to support specific AIP eligible projects achievable within a reasonable period of time. The Secretary should not approve a series of vague future projects, permitting a PFC to be collected indefinitely even if the law's limitations on new PFCs take effect. In addition, the Secretary should not approve a PFC until an airport sponsor has demonstrated that it has complied with all requirements in its own laws or regulations for imposing PFCs.[20]

Airports that now chafe under the federal rules governing the use of PFCs would do well to remember that their ability to collect them in the first place – in effect, to tax individual passengers – is in itself an *exception to a rule*, bestowed by Congress and susceptible to being revoked by the same process.

PFCs, like the Aviation Trust Fund, are not "airport resources," but belong to the public users of the air transportation system.[21] What airports are seeking – fewer constraints on how they spend PFCs and less federal oversight – would lead to a dilution of the Congressional intent to target these passenger dollars to the unmet needs of the airport system.

It is important to recognize that Congress did not *replace* the AIP program with PFCs. Requiring airport improvements to be funded solely by PFCs would result in "haves" and "have-nots," instead of the cohesive air transportation network we have established and need to maintain. AIP grants drawn from the Aviation Trust Fund are a way to guarantee that users of the *system* underwrite the development and maintenance of the entire

[20] 101 H.R. Rep. 581, sec. 108, para. 1.D.

[21] The link between PFCs and the AIP is made explicit in the AIP apportionment formula, which reduces funds to large and medium hub airports if a PFC is imposed by the airport. *See* 49 U.S.C. §47114(f). The underlying premise is that PFCs would be used in lieu of AIP grants for the same types of projects.

system, not just those airports that happen to be positioned to receive the most passengers.

C. Rates and Charges

The fees and rents that airports may charge airlines and other aeronautical users must be reasonable – in other words, they must be realistically related to the actual cost of operating the airport and retiring certain airport bonds, and cannot be designed to generate excessive revenue. The reasonableness requirement has two statutory sources: the grant assurances of the Airport and Airways Improvement Act of 1982,[22] and the Anti-Head Tax Act of 1973.[23] The basis for the requirement can be traced to the U.S. Constitution: a state, political subdivision of a state, or authority acting for a state or political subdivision may collect only reasonable rental charges and landing fees for using airport facilities because to do otherwise could unreasonably burden and discriminate against interstate commerce.[24]

Airport rents and fees are governed by DOT policy[25] implementing Congressional mandates.[26] The Rates and Charges Policy sets forth guidelines intended to ensure that the fee and rental structure is fair and reasonable, that it is not unjustly discriminatory, and that it makes the airport as self-sustaining as possible.

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[22] *Codified at* 49 U.S.C. § 47107.
[23] *Codified at* 49 U.S.C. § 40116.
[24] *See* 49 U.S.C. § 40116(d)(2)(A).
[25] Department of Transportation, Office of the Secretary and Federal Aviation Administration, Final Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31994 (June 21, 1996); *vacated in part by* Air Transp. Assoc. of America v. Dep't of Transp., 119 F. 3d 38, *as amended by* 129 F. 3d 625 (D.C. Cir. 1997).
[26] The Rates and Charges Policy was required by the Federal Aviation Administration Authorization Act of 1994, P.L. 103-305 (Aug. 23, 1994).

The Rates and Charges Policy recognizes two legitimate rate-setting methodologies: residual and compensatory. Under the residual method, the signatory airlines bear the financial risk and guarantee the airport sufficient revenue to meet operating and debt service costs. In return for assumption of risk, non-airline revenues (e.g., concession revenue) are used to offset the airlines' landing fees. Under this arrangement, airlines are usually given a Majority in Interest (MII) approval on capital expenditures.

The compensatory method puts the financial risk on the airport – the airlines only pay for the cost of the facilities they use. The airport, in return, receives all concession revenue (although this revenue is still subject to grant assurances on revenue diversion and therefore must be used on-airport). Many airports today use a hybrid method.

Some airports have been propounding the use of airport fees to "manage" demand, particularly at highly-congested airports. "Demand management" through rate-setting relies on pricing some users out of the market, contrary to the letter and spirit of our aviation system, which assumes that airports receiving federal funding will be available for all users.[27] Demand management should not be used to mask the need for capacity improvements, and DOT should sever its Rates and Charges Policy from the concept of demand management.

The current Rates and Charges Policy, while flawed in some ways (as recognized by the D.C. Court of Appeals),[28] provides a basic framework for airports and their airline tenants

[27] 49 U.S.C. § 47107(a)(1).
[28] *See* Air Transp. Assoc. of America v. Dep't of Transp., 119 F. 3d 38, *as amended by* 129 F. 3d 625 (D.C. Cir. 1997).

to negotiate fair and reasonable agreements. Some members of the airport community recently have gone so far as to suggest that DOT should promulgate new regulations that would recognize the "right" of airports to set fees based on the market and current value of the asset, the way other businesses do. Like many other public facilities, airports are entitled to cover their costs, but do not have a "right" to a return on a capital investment made with public funds. The Rates and Charges Policy is appropriately grounded in the widely accepted principle that airports, unlike private-sector entities, may *not* charge whatever the market will bear.

III. RECOMMENDATIONS

By ACI-NA's own accounting, current and projected airport capital development needs exceed the amounts available through AIP grants and PFC revenue on an annual basis.[29] Given the uncertain economic outlook of the airline industry and the many competing demands on the Aviation Trust Fund, it is more important than ever that the finite funds available are targeted to those projects that are truly necessary to increase the capacity and enhance the safety of the airport system. The FAA should not – and the airlines will not – support projects that do not result in capacity or safety improvements commensurate with the investment of public funds. We simply can not afford to support an airport's "edifice complex" if it comes at the expense of a safe and efficient airport system.

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[29]According to ACI-NA President David Plavin, airport capital development needs are approximately $15 billion per year for the period 2003–2006. Testimony before the House Transportation and Infrastructure Committee. (http://www.house.gov/transportation/press/press2003/release28.html) Airports typically spend much less than that in any given year; total capital spending typically is in the $10-12 billion range.

At the same time, it is critical that the money allocated to these essential projects is managed carefully and expended in accordance with the strictest fiscal rules. In return for decades of federal assistance, airports have willingly obligated themselves to certain rules and conditions on how they manage airport spending. Some of these rules and conditions are indeed complex, and while it may be time to review and streamline some of them, we must remember that they exist for a purpose: to ensure that money collected from the users of the aviation system, whether through the Aviation Trust Fund or PFCs, improves the national aviation system for the benefit of *all* Americans, taking into consideration the needs and priorities of *all* stakeholders. Airports must remain fiscally responsible to the American public as well as their tenants and local constituents.

Airports purport to seek more flexibility in how they spend what they erroneously characterize as "their" financial resources. But "more flexibility" should not be translated into "less accountability." Recently, some airport operators have called for the "decoloring of money" so that all funds flowing through the airport are subject to standardized rules. After all, they say "[i]t's all going to the same purpose, which is to better the airport system."[30] We have no objection to this in theory, provided that *all* airport money is treated with the same high level of accountability required for AIP – *not* fuzzy guidelines that would result in lower standards. To do otherwise would mean betraying the public trust and decades of carefully crafted public policy.

[30] Scott Brockman, Vice President of Finance and Administration, Memphis-Shelby County Airport Authority, *quoted in* Airport Revenue News (March 2004).

Any slackening of the conditions for use of PFC and AIP money would have a particularly detrimental effect on the airlines. Like other users of the system who pay into the Aviation Trust Fund, airlines have a well-founded expectation that the funds will go to the improvement of the system. Airlines are also responsible for the actual collection of PFCs from their passengers, with the understanding that the money will be spent as authorized by Congress. Any AIP or PFC money that goes to currently ineligible projects is money that is *not* available for *necessary* improvements, leaving airlines in the untenable position of advocating deferral of important projects or paying higher airport rates to cover the costs.

Mindful of these considerations, we recommend the following initiatives be considered by the Subcommittee as a means of improving the flow of funds to necessary projects in the airport system and reducing the risk that money will be diverted to other uses.

A. Congress Should Take a Fresh Look at AIP Allocation

The AIP is allocated according to a Congressionally-mandated formula that has developed piecemeal over the years, and as a result, may not reflect the current needs of the system. (CHART 6) ATA urges the Subcommittee to take a fresh look at the apportionment of AIP funds and consider making a larger percentage of it available as discretionary grants for the most critical safety and capacity projects.

Also, we recommend that the Subcommittee consider removing security projects from AIP eligibility, in order to free up that money for safety and capacity projects. As demonstrated so forcefully and tragically on September 11, 2001, aviation security is

national security, and as such should be funded through general revenue, not solely by users of the aviation system. The Department of Homeland Security (DHS), not the airports and not the airlines or their passengers, should fully absorb the costs of protecting our nation from future attacks that may involve aircraft. ATA strongly opposes shifting the costs for airport security to the aviation community. In particular, this Subcommittee should ensure that AIP grants and PFC funds intended for aviation capacity improvements and safety enhancements are not used to make up the shortfall in DHS funding.

Actions for Consideration:

- Review AIP set-asides and apportionment formulas to determine if the current allocation of funds is meeting the needs of the airport system.
- Remove security projects from AIP eligibility to free up funds for safety and capacity projects.

B. The Federal Government Should Continue to Exercise Oversight of Airport Spending

The tools to safeguard the public investment in our national airport system and encourage wise spending in the future already exist. First and most important are the grant assurances that airports must provide when they accept AIP funds. Similarly, regulations governing the use of PFC revenue provide clear guidance to airports and offer reassurance to the public that the money collected will go to its intended purpose.

ATA recommends that this Subcommittee direct the FAA to be especially vigilant in enforcing these conditions and assurances, and provide the agency with the resources

necessary to accomplish this. Where requirements can be streamlined or the paperwork burden reduced without compromising the integrity of the AIP and PFC program, the FAA should undertake to do so in an open and comprehensive process. ATA supports streamlining compliance requirements, but we cannot support the concept of "loosening the purse strings" simply to provide airport operators with more freedom to spend other people's money.

In particular, the Subcommittee should *strengthen* the prohibition on revenue diversion, and close the loophole that has allowed the Port Authority of New York and New Jersey and a handful of other "grandfathered" airport operators to continue to legally divert airport revenue to non-aviation uses.[31] The exemption was originally intended to allow Port Districts or other entities that own and operate non-aviation facilities as well as airports, and that pledged the use of airport revenue to support general debt obligations or other facilities owned and operated by that entity, to honor those legal commitments. More than twenty years late, those debts should be long retired. There is no longer any reason to allow those entities to continue to siphon off airport revenue to less financially successful parts of their operations.

Actions for Consideration:

- Strengthen federal oversight of grant assurances on revenue diversion and economic non-discrimination.
- Close the loophole that allows "grandfathered" airports to divert revenue to non-aviation uses.

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[31] *See* 49 U.S.C. § 47107)b)(2); Federal Aviation Admin., Preamble to Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7700 (Feb. 16, 1999).

C. Airport Projects Should be Justified by a Benefit-Cost Analysis

Under the existing system there is insufficient financial discipline imposed on airports that do not operate with an MII agreement. While FAA has developed a benefit-cost analysis methodology as part of its selection criteria for AIP grants, it is required only for a subset of AIP projects – capacity projects of $5 million or more or those requesting a Letter of Intent,[32] and does not apply at all to projects funded with PFCs.

Economic factors, if they are considered at all, are too often relegated to the final stages of project planning, after the exhaustive environmental review has been completed and the political battles have been fought. In order to ensure that money supplied by users of the aviation system is being spent in a cost-effective manner – that we are getting what airlines and their customers pay for – ATA recommends that airport capital expenditures be justified by a benefit cost analysis, so that the FAA can determine if a proposed project would maximize net benefits to society.

This analysis should occur earlier in the development of a project, so that all stakeholders have an opportunity to provide input, and the result can be used to inform the decision rather than justify a decision that has already been made. A rigorous benefit cost analysis, coupled with continued oversight by DOT and FAA of how airports are spending money derived directly or indirectly from passengers and other users of the aviation system, will ensure that the traveling public is not saddled with the costs of unnecessary or excessive airport development projects.

[32] *See* FAA Airport Benefit-Cost Analysis Guidance, Office of Aviation Policy and Plans (Dec.15, 1999).

Actions for Consideration:

- Expand the application of the benefit-cost analysis to all AIP projects.
- Adopt criteria for PFC projects to ensure that they are both necessary, and represent a cost-effective means of addressing the need.

IV. CONCLUSION

In summary, airports are entrusted with spending money generated by the users of the aviation system, and must be held to the highest standards of fiscal responsibility. AIP grants are not "airport resources." They are user taxes and fees, held in trust for the benefit of all Americans. Nor are PFCs "local dollars" – they are collected by passengers traveling to, from or through the airport, most of whom do not live and vote in that locality. Instead of loosening the federal controls on these funds, we should safeguard them and maximize their impact by focusing our efforts on projects that are critical to the development of a safe and efficient airport system. Thank you.

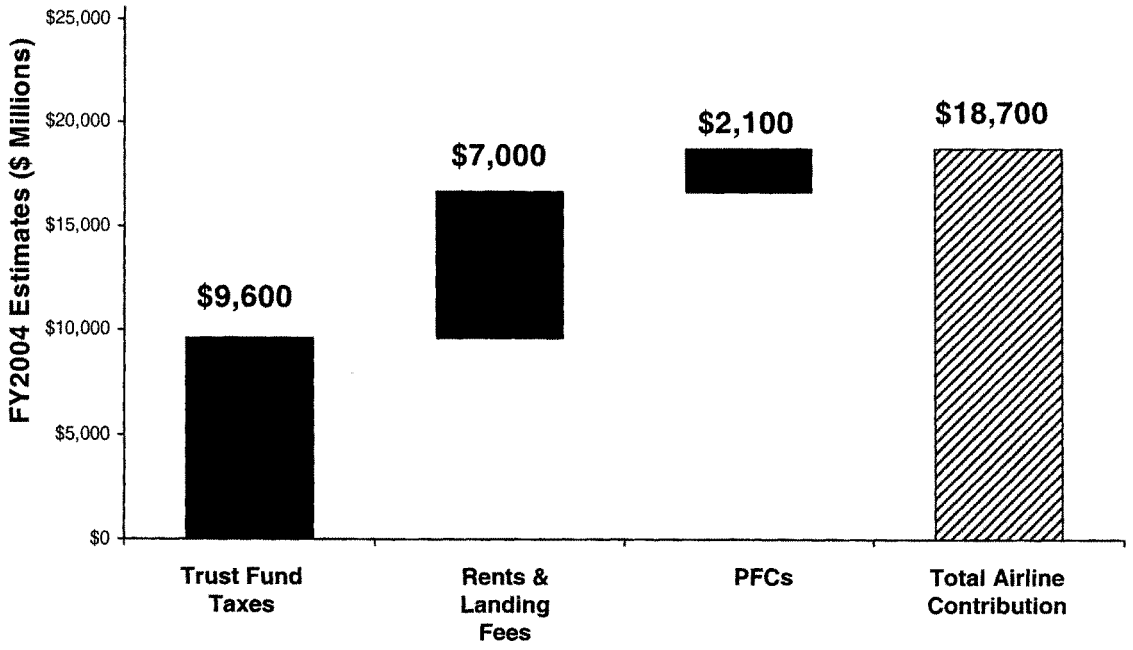
Airport Deregulation Hearing

ATA Charts

1. Airline Contributions to System Funding
2. Sources of Airport Revenue
3. Airport & Airway Trust Fund Revenues
4. Sources of Airport Capital Funding
5. Airport & Airway Trust Fund Expenditures
6. Airport Improvement Program Allocation

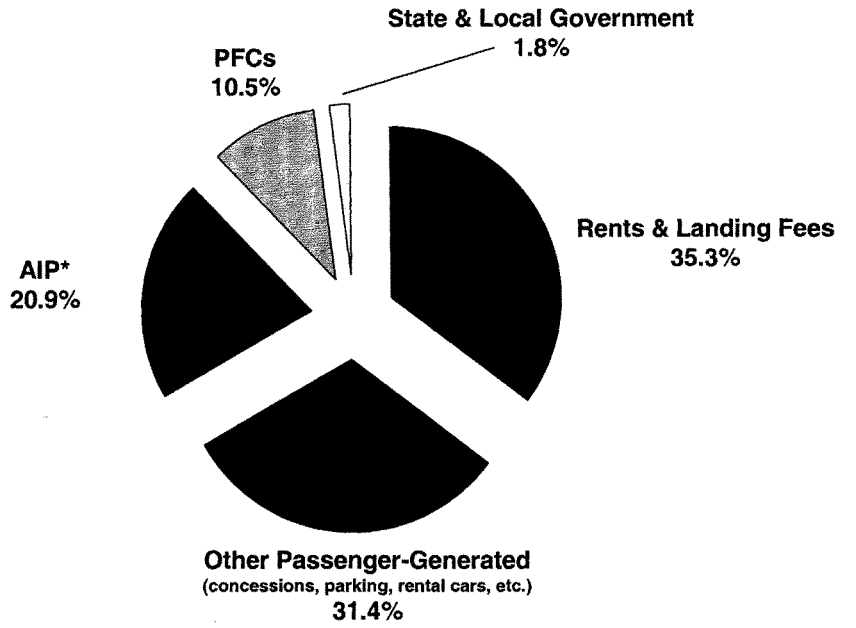
Airline Contributions to System Funding

Nearly $19 Billion Estimated for FY2004



98% of Airport Revenue from Airport Users

U.S. Airport Sources of Revenue, 2001

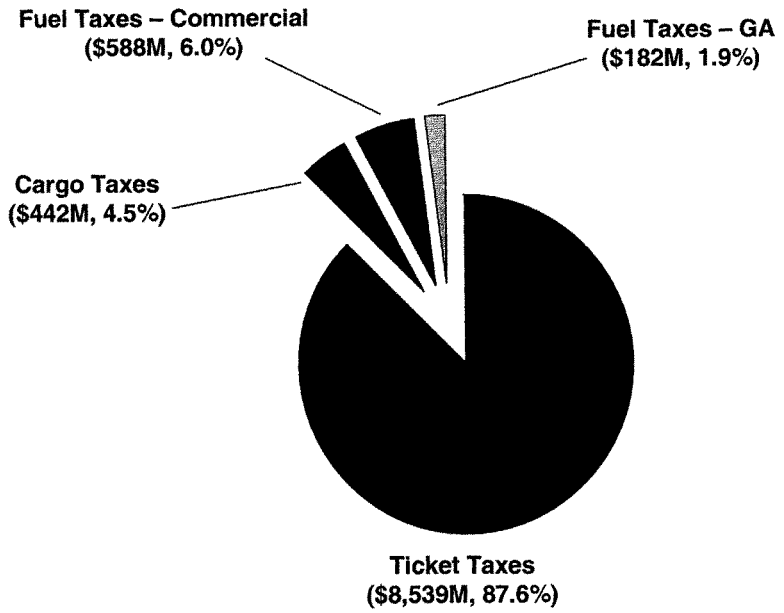


Source: FAA Form 5100-125

*Airport Improvement Program grants from the Airport and Airway Trust Fund, which contains taxes and fees imposed on airlines and their customers

Trust Fund Revenues

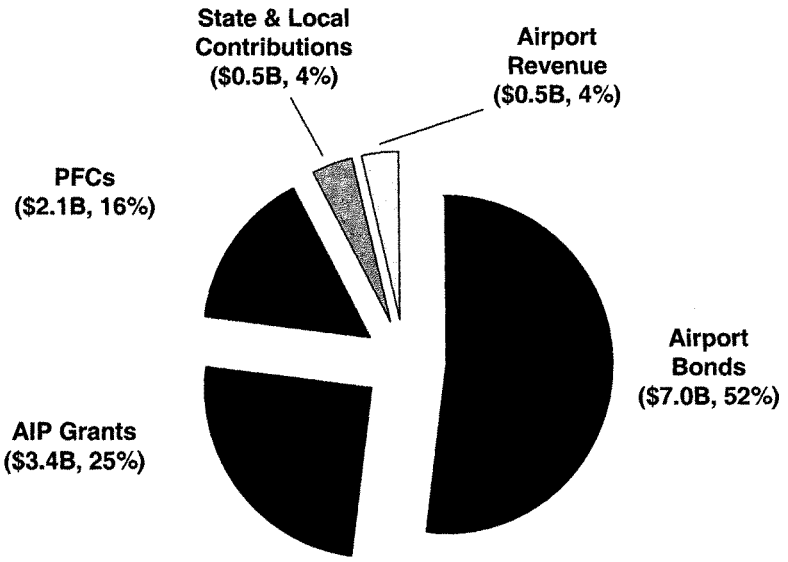
Airport & Airway Trust Fund ($9.8B), FY2004E



Source: Airport and Airway Trust Fund

Sources of Airport Capital Funding

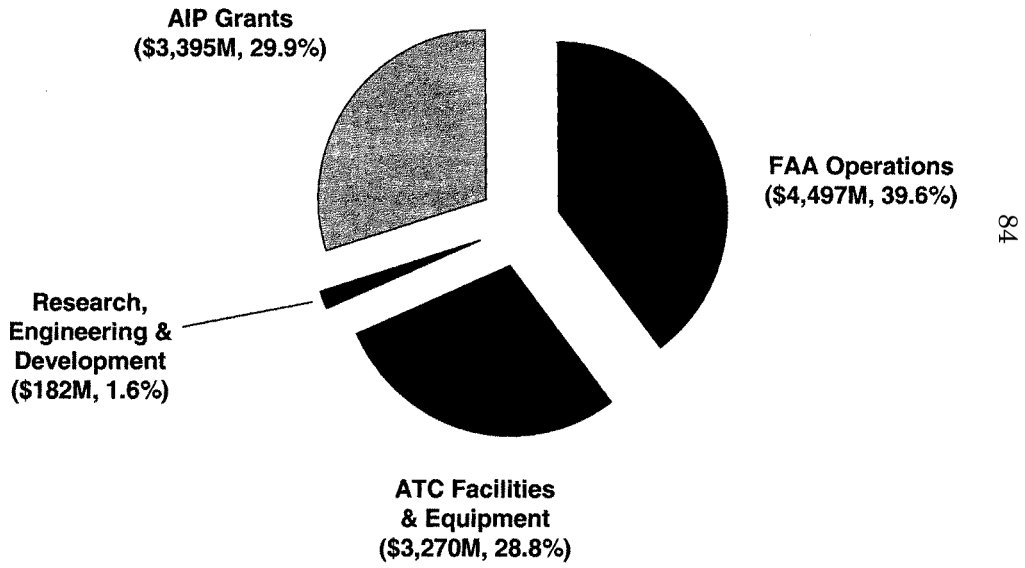
FAA, GAO, and ATA Estimates for All U.S. Airports
[Note: Estimated Annual Total = $13.5 Billion]



Sources: GAO-03-497T (February 25, 2003), Table 2, using GAO, FAA, and Thomson Financial; ATA estimates

Trust Fund Expenditures

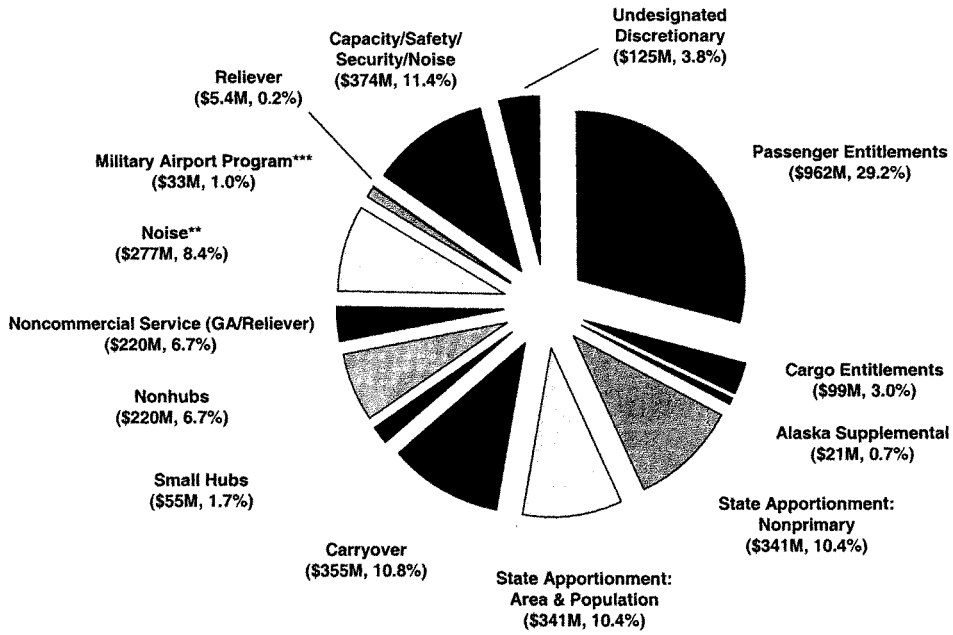
Airport & Airway Trust Fund ($11.3B), FY2004E



Source: Airport and Airway Trust Fund

AIP Allocation

Appropriation of $3.4B,* FY2003E



*Total reduced by rescission of $63.2M for FAA Airports Operations and $19.9M for Small Community Program
**35% of discretionary available for distribution
***4% of discretionary available for distribution

Source: FAA

Statement of

Jeffrey N. Shane
Under Secretary for Policy
U.S. Department of Transportation

on

Airport Deregulation

before the

House Committee on Transportation and Infrastructure
Subcommittee on Aviation
April 1, 2004

Good morning, Mr. Chairman, and members of the Subcommittee. Thank you for inviting me to appear before you today to discuss various aspects of federal policy toward our Nation's airports. Airports play an essential role in our national economy, not only in the facilities and services they provide to air carriers and the traveling public, but also in terms of the jobs and business opportunities they create in their communities. At the federal level, we view our relationship with the Nation's airports as one that is best described as a partnership that has served the American public extremely well over the years. The Department, largely through the Federal Aviation Administration (FAA), works with state and local officials to ensure that airports are safe and environmentally sound, and that they have adequate financial resources to meet the growing demand for air travel.

As members of this Subcommittee are well aware, the September 11th attacks on America carried with them devastating economic consequences for the entire aviation sector, including airports. Air traffic fell precipitously and, at the same time, new security requirements were imposed on both air carriers and airports. The actions taken since 9/11, however, have made air travel safer and more secure than ever before. The airport community should be proud of the enormous contribution it has made to improve the safety and security of commercial aviation, and the foundation it has provided put this crucial industry on the road to recovery.

Despite the challenges of a post-9/11 security environment, airports have benefited substantially from the economic recovery of the past couple of years and the more recent growth in air travel. For example, in 2002 the 429 commercial service airports reported operating profits of $4 billion. Economic recovery does present airports with new challenges, however. Thanks in part to the efforts of this Subcommittee, federal funds for airport infrastructure projects have increased by 69 percent over the last five years, but demand has also grown at a comparable pace. Today, the Airport Improvement Program (AIP) and passenger facility charge (PFC) programs together account for roughly 40% of total airport capital expenditures each year. The Department of Transportation is

committed to working closely with airport operators to ensure that the Nation's airport infrastructure needs continue to be met in a timely way.

In the years ahead, we will face more challenges as we work to ensure that we have sufficient airport and airspace capacity to meet whatever type and level of demand the market may bring. As Secretary Mineta noted at the FAA Forecast Conference just last week, demand is returning but in a very different form than before 9/11. Low-cost carriers have doubled their market share over the last few years, and continue to push legacy carriers to reduce costs, to offer lower prices, and to improve customer service. Having the infrastructure in place to ensure a competitive marketplace going forward will help us avoid congestion and accommodate new business models. That is why Secretary Mineta has launched a Next Generation Air Transportation System initiative, designed to transform our system between now and 2025 to ensure that it has the capacity and efficiency necessary to meet whatever demands the market may bring. We welcome the opportunity here today to engage in a dialogue about how we can work together with the airport community, airlines, and other stakeholders to develop a shared vision of our future and identify the tools we will need to achieve those common goals.

While my testimony provides significant detail regarding what the Department has done to carry out the statutory direction we have been provided by Congress in this area, I would like to first highlight just a few key points. Existing federal policies and programs governing airports have worked pretty well and continue to work well. Despite the fact that federal funds have restrictions attached to them, existing airport programs have considerable built-in flexibility, and the FAA has a demonstrated track record of working with airports to maximize their effectiveness. We want to use this hearing as an opportunity to discuss, in broad terms, the new policies that were adopted in the recently enacted aviation reauthorization legislation, Vision 100 – Century of Aviation Reauthorization Act (Vision 100) and how the FAA intends to implement them. Future challenges will clearly require creative approaches, especially given the growing demand for federal dollars. For that reason, we want to engage the airport community, now, in a dialogue that will both inform our implementation of Vision 100 and begin a process that will result in Administration proposals for the next reauthorization cycle.

Airport Improvement Program

Airport operators have repeatedly expressed their desire for more flexibility in the way that they can use AIP funds, ideally in the same way that they use airport revenues. We are happy to consider such changes to the program, and it is wise to start the debate about the successor to Vision 100 as early as possible. In order to do so, however, we must first understand more fully why airports believe that current requirements are unduly restrictive. In this regard, we encourage the airport community to bring us specific examples of the circumstances in which current AIP regulations have impeded sound financial planning or led to other inefficiencies.

Since the creation of the Federal Aid Airport program in 1946 through the latest reauthorization in Vision 100, federal assistance to airports has focused on the funding of capital development, planning, and noise mitigation. Within these broad parameters, AIP has

evolved over the years, in most cases with enhanced flexibility but in some cases with new requirements that were added when a specific need to protect the public interest was identified. For example, AIP grants were not originally available to finance terminal projects. Over time, eligibility expanded to permit first entitlement funding and later discretionary funding for terminal projects at some airports. Similarly, safety and security was not originally AIP eligible but it is today.

Vision 100 provides the latest example of AIP flexibility. The legislation includes many of the provisions that the Administration recommended in an effort to accord greater flexibility in the use of the non-primary entitlements. For example, Vision 100 extended the carryover period for unused non-primary entitlements from three years to four. It also allowed the pooling and sharing of non-primary entitlements among airports and gave airports the opportunity to use non-primary entitlements to fund revenue producing aviation facilities.

One area where AIP eligibility has been carefully limited over the years is in airport maintenance and operating costs. Since the program's inception, there have been only two cases where AIP eligibility has been expanded to cover such costs. Both of these exceptions were enacted in response to specific circumstances of financial need. The first – permitting use of AIP funds for pavement maintenance at our small airports – was enacted after we recognized that the smallest airports in our system struggle financially and therefore needed such assistance. The second, enacted after the attacks of September 11th, permitted airports to use AIP funds to pay for any costs associated with new security requirements imposed in response to those attacks for up to one year.

Finally, I would like to mention one other provision in Vision 100 that we supported and believe will have a beneficial impact on future airport planning. Section 187 requires that for projects at large- and medium-hub airports, the sponsor must provide information on the proposed changes to the airport layout plan to the local metropolitan planning organization (MPO). This provision is a small but important first step towards improving cooperation and connectivity among our different modes of transportation, especially when considering major infrastructure projects.

There are other, more profound policy questions that would need to be addressed if we were to consider fundamental changes in the character of the airport grant program. AIP grant dollars are not local, but are federal dollars generated by federally imposed user charges, and it is our responsibility in the Executive Branch to work with Congress to define the terms of use for these funds. Future reauthorizations of our federal programs will provide additional opportunities to refine those terms, but in doing so we must always remember our fundamental responsibility to consider the public interest in making any changes in the statutory framework of the AIP.

Passenger Facility Charges

Passenger facility charges (PFCs) are also a substantial source of funding for airport capital development, especially at major airports. Unlike AIP grants, PFCs are local funds that are subject to a federal review process mandated by law. They are also subject to some restrictions on their use, the result of a carefully crafted compromise between the airport and airline communities when PFCs were first authorized in 1990. That compromise has been modified in small ways over the years but remains largely intact in the new Vision 100 legislation.

As with AIP, Vision 100 did provide some additional flexibility and reduction in procedural requirements for PFCs. For example, the law streamlines the federal review process by making the Federal Register public comment period optional and eases the requirement of consulting with airlines that have an insignificant presence at the airport. Changes such as these can reduce the time to process a PFC application by as much as two months. Further, the law includes a pilot program that will simplify the application process for non-hub airports, which typically have limited resources to handle a lengthy federal review process. Each of these changes was recommended by the Administration.

The Vision 100 legislation also expanded PFC eligibility for airports with a demonstrated financial need. Specifically, the law allows the Department to approve a PFC to pay the debt service on any airport project if we determine that the use of PFCs is necessary due to the airport's financial need. In the aftermath of the September 11 attacks, the FAA used its authority to administer the PFC program to provide emergency financial relief. In response to requests from airports that were experiencing cash-flow problems, the FAA instituted a program that allowed airports to "borrow" from their unliquidated PFC revenue account as long as they agreed to repay the account, with interest, within a specified timeframe. This program allowed airports to borrow at interest rates that were lower than what they would have received in the open market. If a similar emergency occurs in the future, the FAA has the option of resurrecting this program.

I hope this account makes clear the extent to which the Department and Congress have tried to accommodate the needs of airports in terms of their use of PFCs in the past, and will continue to do so in the future. Having said that, we do welcome further debate on these issues as we move to implement Vision 100 and lay the groundwork for new proposals in its successor legislation, and will ensure that all affected parties are included in those discussions.

Airport Revenues

Airports are complex enterprises, as evidenced by the substantial expertise it takes to manage an airport authority's finances. Public policy in this area therefore must provide a basis for strong financial support for airports while ensuring fair access to airport facilities for users and taking into full account the effects of such policies on other members of the aviation community. Congress has outlined broad public policy direction both on the collection of

airport revenue—that is, airport rates and charges—and on the permissible uses of airport revenue.

Federal rates and charges policies define what an airport can charge the airlines and other users of the airport. A number of statutes spell out the underlying federal policy in this area. The Anti-Head Tax Act (49 U.S.C. § 40116) prohibits local taxation of air transportation, including imposition of unreasonable charges for use of the airport. As a condition of receiving AIP grants, an airport must also agree to provide access to the airport on reasonable conditions and without unjust discrimination, and to charge air carriers making similar use of the airport similar charges. (49 U.S.C. § 47107(a)(1).) An airport accepting an AIP grant must also agree that its rate structure makes the airport as self-sustaining as possible. This generally requires that an airport charge a market rate for any non-aeronautical use of airport land (49 U.S.C. § 47107(a)(13)(A)).

In implementing these statutes, the Department has encouraged airports to consult with users before adopting fees, to make the airport rate-setting process open and transparent to users, and to resolve any fee disputes locally if at all possible. In fact, the overwhelming majority of airport rates are set through negotiation with users or by local ordinance, without any Federal involvement, and result in rates consistent with congressional policy.

The Department's policy regarding what constitutes "reasonable conditions" permits an airport to recover all foreseeable costs of operating the airfield and other aeronautical facilities. Airports can bill users not only for capital and basic operating costs, but also amounts necessary for items such as debt service, bond coverage reserves, emergency reserves, environmental mitigation, security requirements, and support of the reliever airport system.

Two suggestions have been advanced by individual airports that would go beyond a straight recovery of costs. The first is market pricing for the airfield; the second is congestion pricing. One airport has attempted to charge airlines a commercial market rate for airfield real estate in its landing fees. The airport argued that it was simply charging for the "opportunity cost" of the airfield -- that is, the cost to the city of using the land as an airfield instead of some commercial use that would command a higher rent. In response to the airlines' challenge to that charge, the Secretary of Transportation found that the airport was not entitled to recover the opportunity cost of the airfield because the airport sponsor had given up the opportunity to use the land as anything but an airfield when it signed AIP grant agreements to obtain Federal funds. That decision was upheld in a 1999 review by the U.S. Court of Appeals for the D.C. Circuit.

The second suggestion for providing greater flexibility in levying airport charges is the use of congestion pricing, or peak period pricing. The Department has issued a request for comments on market-based demand management practices at airports. The FAA issued a related notice requesting comment on various market-based and administrative means of controlling congestion at LaGuardia Airport following the congestion experienced at that airport in the year 2000. The notices were issued in anticipation of the scheduled phase out of slots at LaGuardia in 2007. The Department has been reviewing the comments received, and

continues to study these issues. We will take all stakeholder views into account before making any specific recommendations for change in this area.

We appreciate the airport community's concerns about congestion, and I want to assure you that the Department is focused on this issue on many levels. The growing demand for air service will require us to consider new ways to manage the national airspace system, especially at and around heavily used airports. While there clearly are no easy solutions, we are committed to ensuring that we do not see a repeat of the congestion experienced in the summer of 2000. A prime example of that commitment is the action that Secretary Mineta and Administrator Blakey have taken in response to congestion at O'Hare. Through their leadership, we have reached agreement with United and American to reduce operations at the airport in the short run. That agreement was quickly followed by a *Growth Without Gridlock* conference chaired by the new head of our Air Traffic Organization, Russ Chew, where all the major aviation stakeholders agreed on specific actions that would help to alleviate congestion in our skies throughout the remainder of this year.

Turning back to airport revenue use, the FAA's current policy is intended to carry out a clear congressional mandate that airport revenue use be limited to the capital and operating expenses of the airport, the local airport system, and other local facilities owned or operated by an airport and directly and substantially related to air transportation of passengers or property. This requirement, which dates from the Airport and Airway Improvement Act of 1982, is intended not only to ensure the financial viability of airports in the long term, but also to prevent a "hidden tax" on air transportation through diversion of airport revenues to a local government's general fund. In each reauthorization since 1982, Congress has retained this requirement while enhancing the FAA's authority to enforce it.

For example, the 1994 and 1996 reauthorization acts:

- Required annual financial and revenue use reports from commercial airports;
- Enacted new civil penalty provisions applicable to revenue diversion;
- Identified specific practices that constitute revenue diversion;
- Added provisions to the Single Audit Act to require auditors' opinions on an airport's use of revenue;
- Directed that FAA publish a comprehensive statement of policy on use of airport revenue; and
- Applied revenue use requirements directly to all airports receiving Federal assistance, without regard to whether a current grant assurance was in effect (49 U.S.C. § 47133).

The FAA, in its 1999 Policy and Procedures on Use of Airport Revenue, sought to give clear guidance to airports on revenue use. The policy recognized that airport operators live in a complex regulatory and political environment, and that legitimate airport costs are broader than simply paying for airport facilities and basic operating expenses. For example, the policy statement permits modest contributions to local community groups and charities; it recognizes the airport's need for legal representation, advertising, lobbying, and air service promotion; and it permits the airport to contribute to local ground transportation projects directly benefiting the airport, on a pro rata basis. Such flexibility benefits the airport, airport

users and the surrounding communities, and has proven quite useful since this policy went into effect.

Air Carrier Subsidies

Another important question for the Department and members of this committee is the issue of whether airports should be able to provide air carrier subsidies, even on a temporary basis. As you may know, the FAA is currently reviewing a petition that would allow airports to use airport revenue to make direct payments to an air carrier as an incentive to use the airport. More specifically, the Sarasota-Manatee Airport Authority is urging the FAA to permit certain smaller airports to use airport revenues to subsidize air carrier service. The FAA's Revenue Use Policy permits temporary waivers of airport fees for promotion of new service, but does not permit use of airport revenue to subsidize air carriers, on the basis that carrier subsidies cannot be considered an operating cost of the airport. The Sarasota petition was recently published in the Federal Register, and the comment period closed on March 5th. We received a total of thirty-four comments, and those comments are currently under review.

Grant Assurances

One other critical aspect of our work in overseeing airport financing is ensuring compliance with AIP grant assurances. A specific example of the complexities involved in that process is a case brought by the Naples Airport Authority regarding the assurance regarding reasonable access. In that case, the Authority has suggested that the reasonable access assurance should not have been applied in a way that prohibited it from banning Stage 2 aircraft at the Naples Airport. The Airport Noise Control Act of 1990 (ANCA) adopted new requirements for an airport access restriction by Stage 2 or Stage 3 aircraft, but did not repeal or supersede existing law. As a result, an airport proposing to restrict Stage 2 aircraft must not only meet the procedural requirements of ANCA, but also comply with the grant assurance obligation to provide access on reasonable, not unjustly discriminatory terms.

The Authority maintains that if it complied with ANCA, then the FAA should not (and even could not) have reviewed the ban on Stage 2 aircraft under the grant assurances. Put simply, we do not agree with that position, and have responded to the Authority's challenge in the U.S. court of appeals. Since the case is in litigation I will not go into any further detail. I should note, however, that the Naples case has presented a number of new issues to the FAA. Accordingly, we have decided to pursue a consolidation and clarification of the many sources of policy on noise and access for Stage 2 and Stage 3 aircraft, which should be helpful to other airport operators and users in the future. In addition, based on experience with the Naples case, the FAA has streamlined its review of proposed noise and access restrictions by consolidating the ANCA and grant assurance reviews into a single process.

We also understand that airport operators have questioned the need to retain all of the requirements currently imposed through AIP grant assurances. The vast majority of these assurances are required by statute, but we are always prepared to consider appropriate

adjustments and to review specific suggestions. Therefore, when we publish a notice in the Federal Register this summer to implement the new assurances required by Vision 100, we will also take that opportunity to solicit comment on all current assurances as well.

Competition Plans

Earlier I talked about the changing face of the airline industry, and how competition, especially from low-cost carriers, is driving our legacy airlines to be more competitive. Section 40101 of Title 49, U.S. Code, provides statutory guidance to the Department in its oversight of airline competition. More specifically, that section requires us to consider several factors in the public interest as we develop regulations, including "encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry." One important tool that we use to promote airline competition is the requirement that certain airports file competition plan with the Department. Those plans provide important information about gate usage, access, and related issues.

By the late 1990s, it was clear to many airline analysts that vigorous airline competition could thrive only when all air carriers, incumbents and new entrants alike enjoyed equal access to essential airport facilities and services. They realized that the full benefits of deregulation could be realized only if all air carriers are able to compete with one another on fair and equal terms. Before Congress established the competition plan requirement as part of AIR-21, many air carriers, both large and small, raised legitimate concerns about their inability to lease gates and to gain access to some airports in a timely manner. They also expressed concerns about onerous conditions they were often asked to accept as a prerequisite to the leasing of gates, and the fees they were charged to sublease gates from incumbent carriers – even where the incumbents were not using their gates in the most efficient and cost-effective manner. The General Accounting Office, DOT, and other entities studied these issues and found that restrictive airport business practices clearly impeded airline competition.[1]

The AIR-21 competition plan program required large- and medium-hub airports at which one or two air carriers control more than 50 percent of the passenger boardings to provide the Secretary with information regarding conditions that affect the ability of carriers to serve these airports and to compete on equal terms with air carriers already serving them. These conditions include the availability of airport gates and related facilities, leasing and subleasing arrangements, gate use requirements, patterns of air service, gate assignment policy, financial constraints, airport controls over air and ground side capacity, whether an airport intends to build or acquire gates that would be used as common facilities, and fare levels (as compiled by DOT) compared to other large airports. In order to ensure that each

[1] For example, FAA/OST Task Force Study, **Airport Business Practices And Their Impact on Airline Competition,** October 1999; General Accounting Office, **Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets,** October 1996; and Transportation Research Board (Special Report 255), **Entry and Competition in the U.S. Airline Industry: Issues and Opportunities,** 1999, pp. 117-123.

airport successfully implements it plan, the Secretary is required to review, from time to time, how plans are being implemented. The FAA, moreover, may not approve a PFC or execute an AIP grant unless an airport has submitted a written competition plan in keeping with the statutory requirements.

The Department's staff, specifically those in the FAA and the Office of the Secretary, devote a considerable amount of time to reviewing airport competition plans and offering suggestions, not requirements, as to what actions airport officials could take to reduce barriers to entry. The competition plan process provides an opportunity for us to provide guidance on best practices to promote robust airline competition. All of this, of course, is designed to benefit the traveling public, and is carried out with an eye towards minimizing the workload for airport operators. For example, in response to airport concerns about the regulatory burden imposed by the requirement, we have extended the filing period to once every eighteen months rather than once each calendar year.

Some have argued that the competition plan requirement is a significant and unnecessary regulatory burden. I can assure you, Mr. Chairman, that the Department goes to great lengths to minimize that burden. More importantly, however, we feel strongly that this requirement carries significant benefits in promoting airline competition. Everyone agrees that air carriers should be treated fairly. Airport policies and business practices should be designed in a way that ensures timely notice to all air carriers serving an airport when gates become available, and that there is no discrimination in the establishment of fees or conditions of service. When such policies and practices are in place, all carriers operating at an airport are in a position to compete on fair and equal terms.

Since the competition plan requirement has been in effect, we have seen reduced barriers to entry at many concentrated airports. I am submitting with my testimony this morning a paper that provides a list of many of the initiatives airport managers have adopted in response to the competition plan requirement. As of April 2003, low-cost competitors had gained entry or expanded service at 29 of the 38 covered airports, resulting in greater choices and lower fares for air travelers around the country. Let me mention just a few prominent examples. Several airports, such as Atlanta, Cincinnati, Dallas-Fort Worth, Houston, Minneapolis, Newark, Philadelphia, and San Francisco, are recapturing gates or moving away from long-term exclusive use leases in favor of shorter-term preferential use leases, often with use-or-lose provisions. Some are moving to common-use gates. Other airports (e.g., Newark and Cleveland) have recognized the need for a competition advocate to work closely with new entrant carriers during start-up periods and support their efforts to gain access. Some airports with existing long-term exclusive-use leases (e.g., Chicago O'Hare) have used airport discretionary funds to convert underused exclusive-use gates to common-use gates for new entrants or expanding carriers.

Some airports, like Cleveland and Dallas-Fort Worth, have modified their common-use gate protocol to incorporate more pro-competitive features for facilities allocation. Adopting a gate monitoring and management system has helped airports such as Chicago Midway facilitate requests for gate sharing during its capital improvement program and helped officials identify and resolve scheduling conflicts. Airports such as Cleveland and

Chicago Midway have also capped sublease fees and instituted pre-approval requirements of sublease terms. Finally, a few airports (e.g., Chicago O'Hare) are considering modifying majority-in-interest clauses to reduce their potential to impede construction of additional capacity in the future.

The case of Newark is worth exploring in a bit more detail. This airport, operated by the Port Authority of New York and New Jersey, has for many years been dominated by one carrier. In the late 1990's some carriers alleged that they were having a difficult time gaining access to the airport due to Newark's long-term, exclusive use, master use and lease agreements. The competition plan process, including our review procedures and meetings with Port Authority officials, encouraged the airport to try and accommodate new entrants more quickly, re-assert its authority over efficient gate utilization, recapture underused gates, maintain control of common-use gates and, where possible, seek to take back exclusive use gates for conversion to common-use.

During a 1999 Departmental review, we discovered that all of Newark's domestic gates were exclusively leased to signatory carriers and a significant amount of control over the gates had been ceded to the signatory airlines. The lease provisions did contain a clause empowering the airport to require a signatory airline to accommodate requesting airlines – a "forced accommodation" clause – but the airport's authority to enforce that clause was very limited. The airport could not invoke the forced accommodation clause until: (1) a requesting carrier contacted each signatory airline to arrange a voluntary accommodation, and (2) if unable to arrange voluntary accommodation, the requesting carrier obtained written denials of accommodation from each signatory airline. Once a requesting carrier provided such information to the Port Authority, the Port was required to provide a six-month advance notice of forced accommodation to the signatory carrier involved.

We determined that this forced accommodation clause process raised competitive issues and was inconsistent with the grant assurance under which airports are obligated by law to provide reasonable access to its facilities. In this case we determined that AirTran, a proposed new entrant, had been unable to obtain access to the airport in a fair and reasonable manner, and that the airport had no dispute resolution procedure in place to deal with its request. Ultimately, in response to a letter from the Department urging the airport to grant AirTran access, Newark officials did provide a sublease so the carrier could begin providing service.

Looking at it more broadly, Newark's first competition plan – for Fiscal Year 2000-2001 – indicated that the airport accommodated new entrants under the procedures described above. To its credit, the airport did state that it would consider reducing the six-month advance notice of forced accommodation to 90 days, and would develop a program to monitor utilization of its exclusive-use gates. By contrast, Newark's Fiscal Year 2004 competition plan update describes its gate utilization analysis, a decision to accommodate ATA and America West via a common use agreement, and its use of PFC funding for an expansion of Terminal A to help accommodate greater competition. The plan update also included a New Entrant handbook describing common use procedures they have put in place to maximize opportunities for incumbent carrier expansion or new entrant access by giving priority consideration to subtenant or new entrant airlines.

It is clear to me that in the case of Newark the competition plan review process has resulted in substantial benefits for airline passengers. There are numerous examples involving other airports that I could also cite, but the main point here is that competition plans have been – and will continue to be – an essential tool for ensuring airline competition at our Nation's major airports.

Congress recently acted to strengthen federal efforts to promote airline competition. Vision 100 included a new grant assurance for all medium and large hub airports, called the "competition disclosure requirement," that is designed to ensure that airports continue to adopt entry friendly policies. This grant assurance requires such airports to transmit a "competitive access" report on February 1 and August 1 of each year if, during the previous six month period, it had been unable to accommodate one or more requests by an air carrier for access to gates or other facilities. The report must describe the requests, explain why the requests could not be accommodated, and provide a time frame within which the airport will be able to accommodate the requests. This grant assurance is temporary, however, and expires on October 1, 2008.

The new grant assurance provides an additional tool for ensuring fair access to airport facilities, and specifically ties it to the release of federal grants. We are in the process of determining exactly how we will implement this provision, but intend to issue regulations to do that sometime this summer. While the requirements will be fairly straightforward for those airports that have been filing competition plans since passage of AIR-21, it will be new for those airports subject to this assurance but not covered by the competition plan requirement. For those airports, we may encourage the adoption of such practices as gate-use monitoring, appointment of a competitive access liaison, fair and transparent gate assignments and gate availability notification, and oversight of subleases and terms in order to facilitate access.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to address any questions and your colleagues may have.

AIRPORT COMPETITION PLANS

Highlights of Reported Actions to Reduce Barriers to Entry and Enhance Competitive Access

April 2003

I. AVAILABILITY OF GATES AND RELATED FACILITIES	
Major Elements of Competition Plan	• Number of gates available at the airport by lease arrangement. • Samples of gate use monitoring charts. • Description of the process for accommodating new service and for service by a new entrant. • Description of any instances in which the PFC competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or has it caused such gates to become available to others. • Policy regarding "recapturing" gates that are not being fully used. • Resolution of any access complaints during the 12 months preceding the filing. • Use/lose or use/share policies for gates and other facilities. • Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport. • Availability of an airport competitive access liaison for requesting carriers, including new entrants. • The resolution of any complaints of denial of reasonable access by a new entrant or an air carrier seeking to expand service in the 12 months preceding the filing of the plan.
Significant Airport Responses	• Asserting control over underutilized gates. • Designating Competition Access committees. • Adopting more entry-friendly leasing terms. • Removing specific access protections for signatory carriers. • Providing new entrants with informational packages regarding airport access. • Monitoring gate use. • Streamlining forced accommodation process.
Highlights of Recent Actions Reported by Individual Airports:	
Anchorage	Converted from exclusive to preferential leases upon expiration of exclusive leases; created Competitive Access Team; uses web site to publish gate utilization information.
Atlanta	Provides handbook with airport information to requesting carriers and is invoking recapture authority for unused facilities.
BWI	Developed Airline Accommodations Committee consisting of air service development, operations, planning and commercial management offices.
Burbank	Designates official as new entrant liaison and provides guidance package.
Cincinnati	Using Competition Plan Coordinator to develop procedures and time lines to respond in a timely manner to requests for accommodation.
Cleveland	Competition Task Force established to ensure implementation of competition plan and pursue expansion and growth options; will develop new entrant handbook; assigns Administrative Officer to each airline to monitor sublease activity, assess operational needs to ensure efficiency of use.
Detroit	Adopted a policy to override strict "exhaustion of efforts" clause in its lease provision by assisting a requesting carrier to ease any burden and reduce unnecessary delays associated with acquiring gates and related facilities when the airport is unable to provide those facilities.
Houston Hobby/Inter-continental	Renegotiated long-term, exclusive use leases to shorter term, preferential, minimum-use leases (at some terminals) with commitment on part of airport to facilitate inter-carrier accommodations upon request of interested airline; developed Welcome Letter package to include gate usage information and a general Dispute Resolution Policy Statement, as well as other pertinent information.

Milwaukee	Removed potential obstacle for accommodation that enabled a signatory carrier to refuse to accommodate a "direct competitor."
Minneapolis	Undertook Competitive Marketing initiatives with low-fare carriers and created short-term gates with preferences for new entrant carriers; created new entrant package with plans to publish information package on web site.
Nashville	Streamlining exhaustion of efforts requirement by using web site to encourage new entrants to contact airport directly, assists carrier with voluntary accommodation and negotiations, under a timeline; intends to recapture vacant leased gates upon request of another carrier.
Newark	Initiated review of Master Airline leases, identified provisions enabling airport to regain more control over the use of gates; moved to recapture gates or to force accommodation on gates, based on utilization study; streamlined forced accommodation clause by removing an exhaustion of efforts; appointed New Entry Manager and developed New Entrant Airline Rights package.
Oakland	Installing common use ticketing equipment at ticket counters and gates so that all airlines operating there will use identical gate check-in and gate CUTE equipment, thereby providing maximum flexibility in assigning gates, even on a per flight basis, thereby increasing the opportunities for competition; provides Airline Entry Package and airport facilitates negotiations between requesting carriers and incumbents.
Providence	Facilitates gate sharing requests and will not enforce lease clause requiring requesting airline to contact all signatories.
Sacramento	Is formalizing gate availability information by preparing an Airline Information Package containing information on available gates, terms of access, and procedures for securing facilities for new service, to be made available on the airport's web page and upon request.
Salt Lake City	Start Up Package provided to requesting carriers includes a gate utilization report summary, a statement about the airport's dispute resolution practices, as well as other necessary information about operating at the airport.
San Antonio	Negotiated expiring lease to provide for preferential-use; Aviation Department assists requesting airlines in gaining access.
San Francisco	Invoked forced accommodation clause to ensure that temporary gate needs of new entrant airlines were met.
San Jose	Established a Tenant Liaison Committee to respond to requests for access within a reasonable time, gather appropriate information, meet with relevant airport personnel, provide gate utilization information to requesting airline, and act as an intermediary between prospective airline and incumbent airline to expedite accommodation; assigned Property Management personnel as first point of contact.
San Juan	Developing policy on gate use and monitoring requirements to be applied to all gates, drafting sublease guidelines and requirements, developing complaints and disputes resolution policy and developing a master lease incorporating the referenced policies and procedures.

II. ARRANGE FOR LEASING AND SUBLEASING	
Major Elements of Competition Plan	• Whether a subleasing or handling arrangement with incumbent carrier is necessary. • How the airports assists requesting airlines to obtain a sublease or handling arrangement. • Airport oversight policies for sublease fees. • Process by which availability of facilities for sublease or sharing is communicated to other interested carrier. • Airport policies regarding sublease fees. • How complaints by sub-tenants about excessive sublease fees are resolved. • How independent contractors who want to provide such service as ground handling are accommodated. • Formal dispute resolution procedure.
Significant Airport Responses	• Beginning to develop dispute resolution process. • Asserting more control and oversight over sublease fees, terms, and conditions. • Imposing sublease caps on administrative fees. • Reviewing and/or pre-approving subleases. • Notifying carriers of gates available for subleases.
Highlights of Recent Actions Reported by Individual Airports:	
Albuquerque	Adopting dispute resolution procedures.
Anchorage	Requires airport approval and caps administrative fees; adopting dispute resolution procedures.
Atlanta	Adopting dispute resolution procedures.
Austin	Requires airport approval and caps administrative overhead fees.
BWI	Caps fees and requires airport approval.
Chicago O'Hare	Adopting dispute resolution procedures.
Chicago Midway	Gate committee is developing dispute resolution procedures for use on domestic gates.
Cleveland	Pre-approves subleases, caps fees; common-use gate protocol manages gate occupancy times and fines user for failure to comply; adopting dispute resolution procedures.
Dallas Love Field	Adopted a policy to cap sublease administrative fees.
Dallas-Fort Worth	Adopting dispute resolution procedures.
Denver	Adopting dispute resolution procedures.
Detroit	Caps sublease fees for forced accommodation arrangements; requires airport approval for subleases with new entrants; gate utilization policy assures that subtenant will not be disadvantaged by a schedule change of the tenant.
Houston Hobby/Inter-continental	Will initiate the development of a formal dispute resolution process.
Kahului	Requires pre-approval of a sublease and discourages excessive sublease rents.

Memphis	Adopting dispute resolution procedures.
Newark	Is developing more formalized procedures for hearing complaints in addition to considering complaints at station manager or airlines affairs meetings.
Oakland	Requires airport manager's pre-approval for sublease or assignment; restricts amount of assigned space that may be assigned or sublet to another airline; caps fees.
Ontario	Is developing a Gate Use Committee to resolve disputes, set timeline for appeals
Palm Beach	Pre-approval required for subleases; airport has authority to recapture subleased facilities when they represent over 50% of the tenant's leasehold; caps administrative fees; adopting dispute resolution procedures.
Reno	Adopting dispute resolution procedures.
San Antonio	Adopting dispute resolution procedures.
Saint Louis	Airport consent required for subleases; ground-handling fees are subject to airport oversight; preferential-use sublease terms and fees subject to airport oversight; will address sublease markups in new airline use agreement.
San Jose	Developed an Airline Access Complaint form and established procedures for resolving complaints within a reasonable time. Also oversees sublease fees per revised lease and applies, as a matter of policy, sublease fee caps on subleases executed under older master lease.
San Francisco	Adopting dispute resolution procedures.
Washington Dulles	Requires prior approval of subleases and handling agreements; caps sublease fees.

III. PATTERNS OF AIR SERVICE	
Major Elements of Competition Plan	• Markets serviced. • Small communities served. • Markets served by low-fare carrier. • New markets added or dropped in past year
Significant Airport Responses	• Using market analysis to add competitive services. • Using marketing tools to attract low-fare services.
Highlights of Recent Actions Reported by Individual Airports:	
Albuquerque	Instituted New Entrant Promotional Program as an incentive to promote competition.
Charlotte	Performed a Competitive Air Service Assessment indicating possibilities for adding low fare carrier service on certain routes; implemented marketing plan to attract additional service.
Palm Beach	Eliminated surcharge on use of common-use gates for a seasonal or temporary basis; is conducting an "air service enhancement campaign" to increase the air service opportunities available at its airport and to enhance the revenue-generating opportunities for airlines.

Pittsburgh	Provides Airline Information Package; adopted Air Service Marketing Incentive Program to encourage new and competitive air service for existing and new carriers.
Reno	New Airline Incentive Policy implemented; Business Development and Property Administration Division coordinates the accommodation of services and facilities for new entrants, including assisting in negotiations with incumbent signatory airlines and participation in incentive programs.

IV. GATE ASSIGNMENT POLICY	
Major Elements of Competition Plan	• Method of informing carriers of gate assignment policy. • Methods for announcing to carriers when gates become available. • Policies on assigning RON positions.
Significant Airport Responses	• Adopting gate assignment protocols with consideration for new entrants. • Changing signatory policies to lessen burdens on new entrants. • Notifying all carriers of gate availability.
Highlights of Recent Actions Reported by Individual Airports:	
Anchorage	Posts gate utilization information and availability on web site; is required to post public notice prior to leasing space.
Atlanta	Will add link to web site for tenant information; will post information on underused gates after gate use surveys.
BWI	Will revise policy to offer signatory status to any airline willing and qualified to assume substantially similar obligations as those required of a signatory carrier when, due to the physical space limitations at the airport, that airline is otherwise precluded form leasing a full complement of space. Also, will post gate/hold room availability information on its web page and will advertise announcements of gates.
Charlotte	Non-signatory/new entrant landing fee is the same as a signatory landing fee.
Chicago O'Hare	Notified all carriers by facsimile of availability of common-use gate.
Houston Inter-continental	Reassigned underused leased space to an incumbent air carrier for its expansion.
Miami	Prohibits carriers from controlling gate assignments and from transferring or assigning ticket counter positions; requires sharing of contiguous and under-utilized ticket counters.
Nashville	Will post information on gate availability on its web site.
Newark	Notified interested subtenant carriers of potential gate availability during Master Lease Utilization review process; adopted common use procedures (for use to resolve competing interests in a gate) with a priority to new entrants offering competitive services.
Oakland	Provides written notification to airlines as gates become available and includes estimate date of availability; requesting airlines must provide current and planned schedule information.

Philadelphia	Intends to assign new gates on basis of accommodating competitive airline service, considering, among other factors, whether airline is a "low fare" airline, nonstop markets, size of aircraft, frequency of operations, etc.
Pittsburgh	For PFC-financed gates, airport will give priority to new, competitive airline service; signatory fee status not dependent on minimum leasehold.
Phoenix	Is studying the development of contractual and/or regulatory tools to allow airport to better coordinate gate-sharing opportunities; provides gate use and schedule information to prospective entrant carriers; provides New Entrant Information package, containing gate utilization information, to prospective entrant to enable it to make informed decision on which incumbent air carriers to contact for shared gate agreements.
Sacramento	Replaced County ordinance gate assignment process with a lease agreement providing for short-term, preferential-use leases subject to airport reassignment; is developing Airline Information Package to be provided on airport's web page.
Saint Louis	Signatory status is available to subtenants; gate assignment procedures will be published on web site; simultaneously advises all carriers of gate availability; will use its web site to publish relevant information for serving airport; is developing and placing timelines for access; City agent is contact point for City gates as well as facilitating sublease accommodation.

V. GATE USE REQUIREMENT	
Major Elements of Competition Plan	• Gate use monitoring policy. • RON monitoring policy. • Requirement for signatory status. • Minimum requirements for a lease. • Accommodation priorities. • Common-use gate usage policies. • Methods for calculating rental rates for common-use gates.
Significant Airport Responses	• Developing per-gate use monitoring policies. • Making gate usage information available. • Adopting similar minimum utilization requirements for incumbent and new entrant carriers.
Highlights of Recent Actions Reported by Individual Airports:	
Anchorage	Uses its newly installed Multi-User Flight Information Display System (MUFIDS) to identify space to fill specific requests as they arise and to determine which gate are subject to recapture; information is made available upon request and on web site; RON positions are monitored through ground handler.
Chicago Midway	Monitors gates on a per-gate basis to track airline compliance with preferential lease utilization requirements, implement shared-use provisions, develop gate use procedures, and analyze construction phasing, and develop utilization criteria. Also used to schedule airport services such as parking, custodial services, concessions and security.
Dallas-Fort Worth	Instituted formal Gate Monitoring and Reporting Procedures, under auspices of a Gate Monitoring Task Force, in support of PFC competitive access assurance, using FIDS-produced monthly gate activity reports and flight activity reports, for summary daily gate utilization activity by gate and terminal.

Denver	Will negotiate a narrower "preferential" gate availability window with its hubbing carrier and will review the use/lose provisions to ensure they are pro-competitive; drafted 5 Year Strategic Business Plan.
Detroit	Formulated a policy for (1) a gate allocation package that will chart scheduled daily and weekly departures per carrier and (2) an on-going gate monitoring program to determine whether minimum utilization is met.
Miami	Has an active gate-monitoring program to control gate assignments on a daily basis.
Minneapolis	Generates bimonthly gate plot based on scheduled gate usage, modified to reflect actual usage.
Oakland	Monitors gate usage and analyzes and maps flight schedules on a weekly basis to determine availability of space and minimum gate usage, for purposes of determining whether to exercise the 30 day revocation process for a preferential-use gate permit.
Palm Beach	Monitors common-use gate utilization and uses airline provided monthly reports and airport daily monitoring to oversee preferential-use gate usage to determine whether a reallocation of gates should be undertaken to better balance user needs with terminal capacity, and for marketing purposes, that is, identifying high demand or un-served demand markets.
Pittsburgh	Uses new software to monitor gate usage on all gates and to identify opportunities to accommodate new entrants and maximize facility utilization.
Phoenix	Performs periodic studies of flight schedules to monitor gate utilization; will use the studies to communicate gate availability to prospective entrant carriers and will incorporate it in new entrant airline packet; will also use studies to better manage and adjust operating schedules for terminal food beverage and retail concessions; will perform formal gate utilization analysis for each carrier when vacancy rates subside.
Providence	Monitors gate use relying on airline schedule information; uses this information to assist a new entrant in identifying a potential signatory carrier to accommodate it.
Saint Louis	Monitors average daily gate utilization through scheduled daily flight information supplied by airlines; requires monthly gate utilization report in each short term preferential use permit and for new master preferential lease to replace that expiring at year end 2005.

VI. FINANCIAL CONSTRAINTS	
Major Elements of Competition Plan	• Major source of revenue for terminal projects. • Use of PFCs for gates and related terminals. • Availability of discretionary income for capital improvement projects.
Significant Airport Responses	• Using discretionary income for gate projects.
Highlights of Recent Actions Reported by Individual Airports:	
Anchorage	New Airline Operating Agreement permits airport to rate-base capital projects required to accommodate a new entrant or expanding airline, under certain conditions.
Chicago O'Hare	Purchased exclusive-use gate with discretionary funds and converted it to common use.

VII. AIRPORT CONTROLS OVER AIRSIDE AND GROUNDSIDE CAPACITY	
Major Elements of Competition Plan	• Majority-in-interest (MII) clauses covering projects. • Projects delayed because MII clauses revoked. • Plans to modify existing MII agreements.
Significant Airport Responses	• Exempting capital projects necessary for competition from MII votes.
Highlights of Recent Actions Reported by Individual Airports:	
Nashville	May consider, as not enforceable, an MII vote against a development project for the purposes of excluding competition, when the development project is necessary for the airport to meet its obligation to provide access on reasonable terms as required by the AIP assurances.
Providence	Interprets MII clause that excludes from MII concurrence projects to comply with Federal requirements as permitting airport to construct terminal facilities to enhance competition without MII approval.

VIII. AIRPORT INTENTIONS TO BUILD OR ACQUIRE GATES TO BE USED AS COMMON FACILITIES	
Major Elements of Competition Plan	• Common-use gates available. • Common-use gates scheduled to be built. • International gates available for domestic use. • Fee differences between international gate use for domestic service and domestic gates. • Carrier reliance on common-use gates.
Significant Airport Responses	• Utilizing discretionary income to acquire common-use gates. • Adopting common-use gate fees comparable to fees charged for leaseholds.
Highlights of Recent Actions Reported by Individual Airports:	
Anchorage	Converted from exclusive to short-term preferential (subject to recapture) and common-use gates.
Atlanta	Recaptured a temporary exclusive-use gate for preferential use, and converted one underused preferential-use gate to a common-use gate.
BWI	Installing common use terminal equipment (CUTE) in all common-use gates to enhanced the ability of airlines to share gates and hold rooms thereby increasing airport capacity.
Chicago O'Hare	Converted exclusive-use gate to common use.
Cleveland	Adopted protocol for common use gate with priorities given for (a) use by existing carrier that does not lease a gate, (b) a new entrant, and (c) an carrier seeking to expand; would apply this protocol, as needed to exclusive-use gates. Three gates converted to common use; common use gate legislation passed by City; gate program management contract developed; protocol adopted.
Houston Hobby/Inter-continental	Use CUTE system at all ticket counters; IAH has constructed common-use/preferential-use gates; HOU has common-use gates and is developing a standard fee for any common gate use to charge separately for gate use, ticket counter, and common facility use to eliminate confusion in combined "per turn" rates).
Nashville	Has several common-use gates available for requesting carriers; airport will negotiate vacant gate recapture, upon request.
San Jose	Is developing a common use philosophy for the design of new and renovated passenger terminal facilities, including the use of plasma signs, generically sized gates to facilitate sharing, an integrated data system similar to CUTE II to be installed at ticket counters and gate podiums, and a shared baggage screening system.

IX. AIRFARE LEVELS AS COMPARED TO OTHER LARGE AIRPORTS	
Major Elements of Competition Plan	• Carrier local passenger, average fare, market share and average passenger trip-length data. • Data above compared to other airports.
Significant Airport Responses	• Using fare data to illustrate competitive strength. • Using market share data to attract new service.
Highlights of Recent Actions Reported by Individual Airports:	
Chicago O'Hare	Using fare data, actively tracks O'Hare's competitive position relative to other markets.
Palm Beach	Using market share data to highlight market opportunities for new and incumbent carriers.
30 Airports	Published Competition Plan, including market-share data, on web page.